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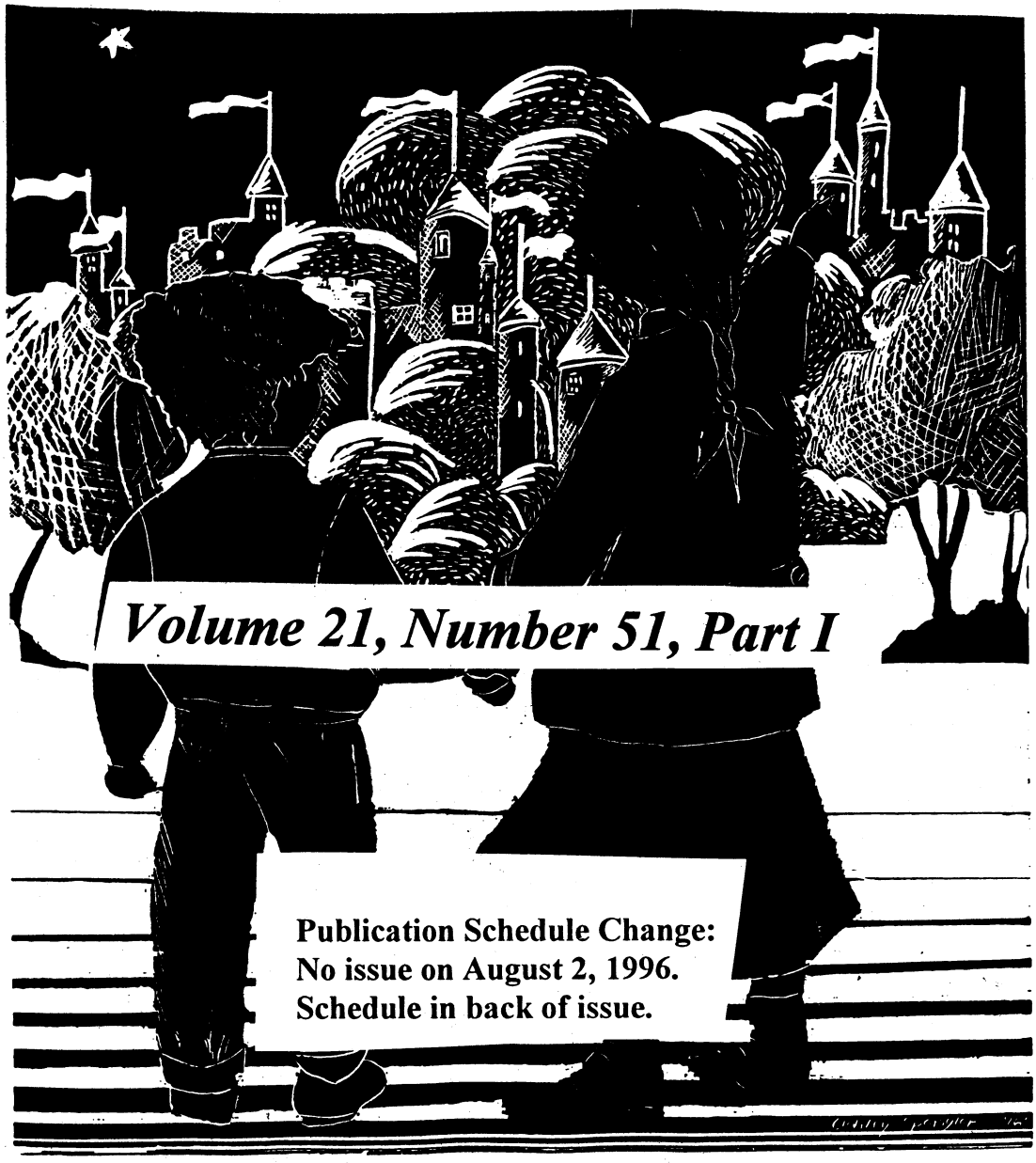

Volume 21, Number 51, Part I

Publication Schedule Change:
No issue on August 2, 1996.
Schedule in back of issue.

This month's front cover artwork:

Artist: *Ashley Spangler*

8th grade

Hendrick Middle School, Plano ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

Starting with the February 27, 1996 issue, we will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

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WITHDRAWN RULES

ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Office of the Attorney General

Request for Opinions

RQ-892. Requested from the Honorable Mike Driscoll , Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002-1891, concerning whether a juvenile board may provide educational services to juveniles that have not been adjudicated delinquent.

RQ-893. Requested from Dr. David R. Smith , Commissioner of Health , Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning whether the Texas Department of Health is required to issue a supplementary birth certificate in the case of an out-of-state adoption by two persons of the same gender.

RQ-894. Requested from Barry R. McBee, Chair, Texas Natural Resources Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, concerning Constitutionality of a federal regulation that requires the immediate temporary suspension of a motor vehicle safety inspector's license under certain circumstances.

TRD-9609052

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statues: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full texas of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Opinions

AOR —369. Whether a non-judicial elected officer who is leaving office and will be receiving a retirement party for his 30 years of public service must establish a campaign committee, appoint a treasurer, and comply with Title 15, Election Code, restrictions on political contributions, where all unused contributions would be returned to the contributors.

AOR —373. The Texas Ethics Commission has been asked to consider whether §572.054(b) of the Government Code prohibits a lawyer from representing a client in a "redetermination proceeding," in which the client disputes the results of a sales tax audit performed by the Comptroller, if the former employee provided advice, as an employee of the Comptroller, in connection with the audit that is now in dispute.

AOR —374. The Texas Ethics Commission has been asked to consider whether a judicial candidate is required to report a transaction in which several individuals, acting together, make a direct campaign expenditure of less than $500 to support a candidate. The group had not filed an appointment of campaign treasurer as a political committee and apparently was not required to. The requestor also asks whether the 1995 Judicial Campaign Fairness Act is relevant to this situation. Finally, the requestor asks whether the name of an individual who helps the members of a specific-purpose political committee plan campaign activities is required to be reported on any report filed by the specific-purpose committee.

AOR-375. The Texas Ethics Commission has been asked to consider whether the period for a judicial candidate to accept contributions extends 120 days after a primary runoff if the candidate, who won the runoff, will be unopposed in the November general election. The Texas Ethics Commission is authorized by the Government Code, §571.091 to issue advisory opinions in regard to the following statutes: (1) Government Code, Chapter 572; (2) Government Code, Chapter 302; (3) Government Code, Chapter 305; (4) Election Code, Title 15; (5) Penal Code, Chapter 36; and (6) Penal Code, Chapter 39.

Issued in Austin, Texas, on July 3, 1996.

TRD-9609682
Karen Lundquest
General Counsel
Texas Ethics Commission

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***; or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 330. Municipal Solid Waste

Subchapter R. Management of Whole Used or Scrap Tires

30 TAC §330.860

The Texas Natural Resource Conservation Commission (commission) adopts on an emergency basis new §330.860 concerning the Special Authorization Priority Enforcement List. Emergency adoption of the new section is necessary to prevent imminent peril to the public health, safety or welfare. The commission has received numerous complaints from state, city and county health officials regarding the problems associated with whole tires piling up at generator locations primarily in the west Texas area. The concerns include fire, the creation of breeding grounds for mosquitoes, snakes and rodents, human health problems, as well as traffic safety due to tires piling up alongside roadways. Because generator locations are usually located in large population centers, the threat of fire is of particular concern since whole tire piles are easily ignited. An uncontrolled burning tire pile releases toxic chemicals into the air and may also result in contamination to groundwater.

Specifically, the new section would establish the Special Authorization Priority Enforcement List (SAPEL) which would consist of waste tires generated in specially designated counties or regions which are not receiving adequate collection service and which, as set forth in §361.476, Health & Safety Code, pose a threat to public health and safety, or the environment. Additionally, the rules establish the framework for a contracting mechanism whereby the agency may contract with collection entities designated by the executive director for the collection and transportation of SAPEL tires.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated Section 2007.043. The following is a summary of that assessment. The specific purpose of the rule is to provide, on an emergency basis pending adoption on a permanent basis, a framework that will allow the commission to prevent imminent peril to the public health, safety and welfare by contracting with waste tire collection entities for the collection and transportation of scrap tires and tire pieces that are accumulating in certain west Texas counties and regions. The commission has received numerous complaints from state, city and county health officials regarding the problems associated with whole tires piling up at generator locations. Tire shreds have piled up at storage sites and scrap tires are not being collected from generator locations, raising the threat of fires, creation of breeding grounds for mosquitoes, snakes and rodents, and human health problems, as well as traffic safety due to tires piling up alongside roadways. The rule will substantially advance this specific purpose by establishing procedures for designating scrap and tire pieces as SAPEL in counties or regions not receiving adequate tire collection and which pose a threat to human health, safety and welfare. Under statutory authority, the commission may contract for collection of the tires. Promulgation and enforcement of this rule will not affect, or create a burden on, private real property because the rule pertains only to new procedures to facilitate the collection of accumulated scrap tires and tire pieces so as to eliminate the threat to public health, safety and welfare, as well as the environment. The rule may be considered less stringent than the existing rules to the extent that the agency will be reducing the burden on the regulated community by supplementing its efforts in carrying out a currently-uneconomical task. Except for the exemptions which are specified in Senate Bill 14 and addressed above, there are no other identifiable exemptions that would apply to this rulemaking.

These rules are adopted on an emergency basis under the authority of the Health & Safety Code, §361.011 which charges the commission with the responsibility of managing solid waste, coordinating municipal solid waste activities, controlling all aspects of the management of municipal solid waste, and which grants the commission with the powers necessary or convenient to carry out those responsibilities; §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health & Safety Code; Texas Water Code, §5.229 which gives the executive director the authority to enter contracts on behalf of the commission; and Health & Safety Code, §§361.475, 361.476 and 361.477 and §361.484 which give the commission the authority to adopt rules necessary to implement Subchapter P, Health & Safety Code, relating to the Waste Tire Recycling Program.

§330.860. Special Authorization Priority Enforcement List.

(a) Special Authorization Priority Enforcement List

(1) General. The Special Authorization Priority Enforcement List (SAPEL) consists of waste tires generated in specially designated counties or regions which are identified by the executive director as areas which are not receiving adequate collection service and which pose a threat to public health and safety or the environment.

(A) The executive director may designate collection entities as necessary to ensure continuous and adequate collection of SAPEL tires.

(B) The executive director may impose certain conditions on the SAPEL tire collection activities of designated collection entities as necessary to minimize disruption of activities at the generator locations and any other actions consistent with this subsection that are necessary to carry out the purposes of this section.

(C) Implementation of this section is not intended to impair or reduce existing generator collection in areas of the state containing SAPEL tires if adequate collection service is currently provided.

(D) The requirements of §330.878 of this title (relating to Special Authorization Tires), do not apply to SAPEL tires.

(2) Relationship to Priority Enforcement List (PEL). The SAPEL shall be a component of the PEL and the number of tires on sites listed on the SAPEL shall be included in determining whether the total number of tires at sites contained on the PEL exceeds 2.5 million. Unless otherwise provided by the executive director, the requirements in §§330.861- 330.870 of this title (relating to Priority Enforcement List; Potentially Responsible Party; Priority Enforcement List; Ranking of Illegal Waste Tire Sites; Assignment of PEL Sites; Pre PEL Clean-up Responsibilities; Site Clean-up Agreement; Approval to Collect and Process Tires from PEL Sites; Post PEL Clean-up Responsibilities; and Authority of Commission Personnel), do not apply to the SAPEL or SAPEL process.

(3) Generator responsibility. A generator desiring to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions. A generator shall make his site available for access by designated collection entities for SAPEL tire collection. Failure to comply may result in tires at that site being ineligible for listing on the SAPEL.

(b) SAPEL Contract.

(1) General.

(A) The executive director may contract with designated collection entities as necessary to ensure adequate collection of SAPEL tires.

(B) SAPEL tire and tire pieces are eligible for reimbursement as long as all applicable requirements relating to reimbursement and end use set forth in this subchapter are satisfied. Any available reimbursement shall be reduced by the amount of transportation costs paid on a tire under a contract issued under this section.

(2) As part of the SAPEL contract, a designated collection entity may be required to comply with the following:

(A) for entities currently providing scrap tire collection, proof that their participation in the SAPEL contract process shall not impair or reduce their existing generator collection routes;

(B) attempt to the maximum extent possible to deliver SAPEL tires to an end user;

(C) special manifesting and reporting requirements;

(D) provide proof of ability to ensure adequate collection service for sites containing SAPEL tires; and

(E) any other requirements as necessary which are consistent with this section, and will facilitate cleanup of SAPEL tires and protect human health, safety and the environment.

Issued in Austin, Texas, on June 26, 1996.

TRD-9609169
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: June 26, 1996
Expiration date: October 24, 1996
For further information, please call: (512) 239–1970

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Vehicle Emissions Inspection and Maintenance Program

37 TAC §23.93

(Editor's Note: The following Emergency adoption to §23.93 was inadvertently omitted from the July 5, 1996, issue of the Texas Register due to technical problems. The effective date of the following emergency adoption is July 1, 1996)

The Texas Department of Public Safety adopts on an emergency basis new §23.93 concerning vehicle inspection. The new section will implement the provisions of Executive Order GWB96-1 as authorized by Senate Bill 178, 74th Legislature, 1995, which requires the Texas Department of Public Safety in cooperation with the Texas Natural Resource Conservation Commission (TNRCC) to implement a Vehicle Emissions Inspection and Maintenance Program necessary for the state. The department finds that adoption of this rule on fewer than 30 days notice is required because implementation date of the program is July 1, 1996.

New §23.93 establishes a vehicle emissions inspection program in Harris County and modifies the program in Dallas, Tarrant, and El Paso counties to comply with the Revised Texas Inspection and Maintenance State Implementation Plan (SIP). §23.93 further provides definitions, specific requirements for testing particular year models, and rules and regulations for inspectors and inspection stations.

The rule is adopted on an emergency basis pursuant to the Texas Health and Safety Code, Chapter 382, and the Texas Clean Air Act (TCAA), which provides the department with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§23.93. Vehicle Emissions Inspection Requirements.

(a) General. The rules of the Texas Department of Public Safety set out herein are to maintain compliance with the Texas Clean Air Act. The department is authorized to establish and implement an emissions program that is a part of the annual vehicle safety inspection program, in accordance with the Health and Safety Code, Chapter 382 and rules adopted thereunder.

(b) Terms and/or Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Department of Public Safety (DPS), the terms used by the DPS have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjusted annually - refers to percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs (as of August 31) from the CPI for 1989; adjustments shall be effective on January 1 of each year.

(2) Department - refers to the Texas Department of Public Safety.

(3) Designated Counties - refers to Dallas and Tarrant counties effective July 1, 1996, through December 31, 1996. Dallas, El Paso, Harris, and Tarrant counties effective January 1, 1997, and thereafter.

(4) Designated Vehicles - refers to all motor vehicles, as defined in the Texas Transportation Code, §541.201, unless otherwise exempted or excepted, that are:

(A) capable of being powered by gasoline;

(B) from two years old to and including twenty-four years old; and

(C) registered in or required to be registered in and primarily operated in a designated county; or primarily operated in a designated county.

(5) Director - refers to the director of the Texas Department of Public Safety or the designee of the director.

(6) Emissions control component - refers to a device designed to control or reduce the emissions of substances from a motor vehicle or motor vehicle engine, of a model year of 1968 or later and installed on or incorporated in a motor vehicle or motor vehicle engine in compliance with requirements imposed by the Motor Vehicle Air Pollution Control Act (42 U.S.C. §1857 et. seq.) or other applicable law. This term shall include, but not be limited to the following components: air pump; catalytic converter; coil; distributor; evaporative canister; gas cap; exhaust gas recirculation (EGR) valve; fuel filler cap; ignition wires; oxygen sensor; positive crank case ventilation (PCV) valve; spark plugs; thermal reactor; gas cap; and hoses, gaskets, belts, clamps, brackets, filters or other accessories and maintenance items related to these emissions control components and systems.

(7) Emissions tune-up - refers to a basic tune-up along with functional checks and any necessary replacement or repair of emissions control components.

(8) EPA - refers to the United States Environmental Protection Agency; the federal agency that monitors and protects air and water resources.

(9) Exempt vehicles - refers to vehicles otherwise considered "designated vehicles" that are:

(A) antique vehicles, as defined by Texas Transportation Code, §502.275;

(B) circus vehicles are defined as vehicles registered to an entity engaged in the business of a commercial variety show featuring animal acts for public entertainment, and which is licensed by the Texas Board of Health under the Health and Safety Code, Chapter 824.

(C) slow-moving vehicles as defined by Texas Transportation Code, §547.001; or

(D) motorcycles as defined by Texas Transportation Code, §502.001.

(10) First safety inspection certificate - refers to the initial inspection certificate issued by a DPS certified inspection station for a new motor vehicle that qualifies for a two-year initial inspection certificate in accordance with the Texas Transportation Code, §548.102.

(11) I/M - refers to Inspection and Maintenance.

(12) Inspection station - refers to an inspection station/facility as defined in the Texas Transportation Code, §548.001.

(13) Inspector - refers to an inspector as defined in the Texas Transportation Code, §548.001.

(14) Loaded mode I/M test - refers to an emissions test that measures the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded mode I/M test equipment specifications shall meet EPA requirements for Acceleration Simulation Modes equipment.

(15) Motorist - refers to a person or other entity responsible for the inspection, repair, maintenance or operation of a motor vehicle, which may include, but is not limited to, owners and lessees.

(16) Nonattainment area - refers to any portion of an air quality control region where any pollutant exceeds the national ambient air quality standards for the pollutant as designated pursuant to the Federal Clean Air Act (FCAA).

(17) Out-of-cycle test - refers to an emissions test not associated with the annual vehicle safety inspection testing cycle.

(18) Person - refers to a human being, a partnership or a corporation that is recognized by law as the subject of rights and duties.

(19) Primarily operated in - refers to the use of a motor vehicle greater than 60 continuous days per year in a county.

(20) Program area - refers to Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Galveston, Liberty, Montgomery, Tarrant, and Waller counties.

(21) Re-test - refers to a successive vehicle emissions inspection following the failing of an initial emissions test by a vehicle during a single testing cycle.

(22) Revised Texas I/M SIP - refers to the Texas Inspection and Maintenance State Implementation Plan which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as revised May 29, 1996, in accordance with Chapter 40, Code of Federal Regulations (CFR), Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995.

(23) Safety inspection - refers to a compulsory vehicle inspection performed as required by Texas Transportation Code, Chapter 548, by an official inspection station issued a certificate of appointment by the department.

(24) Safety inspection certificate - refers to an inspection certificate issued under Texas Transportation Code, Chapter 548, after a safety inspection as defined herein.

(25) Tampering-related repairs - refers to repairs to correct tampering modifications, including but not limited to engine modifications, emissions system modifications, or fuel-type modifications disapproved by the TNRCC or the EPA.

(26) Testing cycle - refers to an annual or biennial cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

(27) Test only facilities - refers to inspection facilities certified to do emissions testing that are not engaged in repairing emissions control components of vehicles. Acceptable repairs in test-only facilities shall be oil changes, air filter changes, repairs and/or maintenance of non-emissions control components, and the sale of auto convenience items.

(28) Test and repair facilities - refers to inspection facilities certified to do emissions testing that engage in repairing, replacing and/or maintaining emissions control components of a vehicle.

(29) TNRCC - refers to the Texas Natural Resource Conservation Commission.

(30) Two years old - refers to a vehicle on the date of the second anniversary of the vehicle's first sale. For vehicles originally sold and registered in Texas, it will be presumed that the date of the second anniversary of the vehicle's first sale will be upon the expiration of the two-year safety inspection certificate unless the person seeking the safety inspection presents appropriate proof otherwise. On all vehicles that do not have a two-year safety inspection certificate it will be presumed that the date of the second anniversary of the vehicle's first sale will be the last day of September of the year model of the vehicle, unless the person seeking the safety inspection certificate presents appropriate proof otherwise. Appropriate proof will be in the form of any one of the following documents that include the date of the first sale: a bill of sale; a retail installment contract; the manufacturer's statement of origin; a purchase agreement; an extended warranty contract; or the first issued registration receipt.

(31) Uncommon part - refers to a part that takes more than 30 days for expected delivery and installation.

(32) VIR - refers to the Vehicle Inspection Report.

(33) VRF - refers to the Vehicle Repair Form.

(c) Applicability. Beginning July 1, 1996, the requirements of this section and those contained in the Revised Texas I/M SIP shall be applied to designated vehicles, as defined herein, and to vehicle inspection stations and inspectors certified by the department to inspect vehicles in the designated counties.

(d) Control requirements.

(1) In designated counties, in order to be certified by the department as a vehicle inspection station, the vehicle inspection station must be certified by the department to do emissions testing. This provision does not apply to vehicle inspection stations certified by the department as vehicle inspection stations prior to July 1, 1996, or to vehicle inspection stations endorsed only to issue one or more of the following inspection certificates: trailer certificates, motorcycle certificates, commercial windshield certificates, commercial trailer certificates

(2) In designated counties, only department certified inspection stations that are certified by the department to do emissions testing may perform the annual safety inspection on designated vehicles.

(3) An inspection station in a county not "designated" herein shall not inspect a designated vehicle unless the inspection station is certified by the department to do emissions testing, unless:

(A) the motorist presenting the vehicle provides proof in a form approved by the department that the vehicle is no longer a designated vehicle;

(B) the motorist presenting the vehicle signs a sworn affidavit, on a form provided by the department, stating that the vehicle no longer qualifies as a designated vehicle. This form will be forwarded to the appropriate vehicle inspection office of the department for verification; or

(C) the motorist presenting the vehicle signs a sworn affidavit, on a form provided by the department, stating the vehicle will not return to a designated county prior to the expiration of the current inspection certificate, and further stating that immediately upon return to a designated county the vehicle will be reinspected at an inspection station certified to do emissions testing.

(4) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual safety inspection at a DPS certified inspection station that is certified to do emissions testing. The exception to this provision is for commercial motor vehicles as defined by the Texas Transportation Code, §548.001, that meet the definition of "designated vehicle" as defined herein. Said "designated" commercial motor vehicles must be emissions tested at a DPS certified inspection station that is certified to do emissions testing and must have a unique emissions test only inspection certificate, as authorized by Texas Transportation Code, §548.251, affixed to the lower left hand corner of the windshield of the vehicle, immediately above the registration sticker, prior to receiving a commercial motor vehicle inspection certificate pursuant to Texas Transportation Code, Chapter 548.

(5) Any non-exempt vehicle capable of being powered by gasoline, from two years old to and including twenty-four years old, presented for the annual vehicle safety inspection in designated counties will be presumed to be a designated vehicle and will be emissions tested as a part of the annual vehicle safety inspection.

(6) Vehicles registered in designated counties will be identified by a distinguishing validation registration sticker as determined by the Texas Department of Transportation.

(7) Vehicles having been inspected under the emissions testing program and found to have met the requirements of the program in addition to all other vehicle safety inspection requirements will be passed by the certified inspector, who will thereafter affix to the windshield a unique emissions inspection certificate pursuant to Texas Transportation Code, §548.251. The only valid inspection certificate for designated vehicles shall be a unique emissions inspection certificate issued by the department, unless otherwise provided herein.

(8) The department shall perform challenge re-tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge re-test through the department within 15 calendar days of the emissions test being challenged or questioned.

(9) Federal and State governmental or quasi-governmental agency vehicles that are primarily operated in designated counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M SIP.

(10) Any motorist in a designated county whose designated vehicle has been issued an emissions-related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(11) Inspection certificates issued prior to the effective date of this section shall be valid and shall remain in effect until the expiration date thereof.

(e) Waivers and extensions. Under this section, the department may issue an emissions testing waiver or time extension to any motorist or vehicle that meets the established criteria. An emissions testing waiver or a time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test. Applications for emissions testing waivers and time extensions shall be accepted by the department. There are four types of emissions testing waivers and time extensions: Minimum Expenditure Waiver; Individual Vehicle Waiver; Parts Availability Time Extension; and Low-Income Time Extension. The motorist may apply once each testing cycle for the Minimum Expenditure Waiver, Individual Vehicle Waiver, and Parts Availability Time Extension. The motorist may apply every other testing cycle for the Low-Income Time Extension.

(1) Minimum Expenditure Waiver.

(A) Eligibility. A vehicle may be eligible for a Minimum Expenditure Waiver provided that it has:

(i) failed both its initial emissions inspection and re-test; and

(ii) incurred qualified emissions-related repairs, as defined herein, whose cost is equal to or are in excess of the minimum expenditure amounts, as defined herein for the county in which the vehicle is registered.

(B) Qualified Emissions-Related Repairs. Qualified emissions-related repairs are those repairs to emissions control components, including diagnosis, parts and labor, that count toward a minimum expenditure waiver. In order to be considered qualified emissions-related repairs, the repair(s):

(i) must be directly applicable to the cause for the emissions test failure;

(ii) must be performed after the initial emissions test or have been performed within 60 days prior to the initial emissions test;

(iii) must not be tampering-related repairs, as defined herein;

(iv) must not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer; and

(v) after January 1, 1997, for 1981 and newer model year vehicles, must be performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas in order to include the labor cost and/or diagnostic costs. After January 1, 1997, when repairs are not performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas, only the purchase price of parts, applicable to the emissions test failure, qualify as a repair expenditure for the minimum expenditure waiver.

(C) Minimum expenditure amounts. The following minimum expenditure amounts are applicable:

(i) In Dallas and Tarrant counties, the minimum expenditure waiver amount shall be $200 for 1981-and-newer vehicles and $75 for 1980-and-older vehicles.

(ii) In El Paso and Harris counties, the minimum expenditure waiver amount shall be $300 in 1997. After January 1, 1998, the minimum expenditure waiver amount in El Paso and Harris counties shall be $450 (1989 dollars) and shall be adjusted annually thereafter.

(D) Validity. A Minimum Expenditure Waiver shall be valid through the end of the twelfth month from the date of issuance.

(E) Conditions. The following conditions must be met in order to receive a Minimum Expenditure Waiver:

(i) the vehicle must pass a visual inspection performed by a department representative to insure that the emissions repairs being claimed have actually been performed;

(ii) the parts and labor receipts for the qualified emissions-related repairs must be presented to the department and support that the emissions repairs being claimed have actually been performed; and

(iii) the valid re-test Vehicle Inspection Report (VIR) and valid Vehicle Repair Form (VRF) for the applicant vehicle must be presented to the department. After January 1, 1997, if labor and/or diagnostic charges are being claimed towards the minimum expenditure amount, the VRF shall be completed by a Recognized Emissions Repair Technician of Texas.

(2) Low-Income Time Extension. A Low-Income Time Extension may be granted in accordance with the following conditions:

(A) The applicant must supply to the department proof in writing that:

(i) the vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed VIR;

(ii) the vehicle has not been granted a Low-Income Time Extension in the previous testing cycle;

(iii) the applicant is the owner of the vehicle that is the subject of the Low-Income Time Extension; and

(iv) the applicant receives financial assistance from the Texas Department of Human Services (subject to approval by the director) or the applicant's adjusted gross income is at or below the current federal poverty level; proof shall be in the form of a federal income tax return or other documentation authorized by the director that the applicant certifies as true and correct.

(B) After an applicant receives an initial Low-Income Time Extension, the vehicle must pass an emissions test prior to receiving another Low-Income Time Extension or any waiver or extension.

(3) Parts Availability Time Extension. A Parts Availability Time Extension may be granted in accordance with the following conditions:

(A) The applicant must demonstrate to the department:

(i) reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers; and

(ii) emissions-related repairs cannot be completed before the expiration of the safety inspection certificate or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part, as defined herein.

(B) The applicant shall provide to the department:

(i) an original VIR indicating the vehicle failed the emissions test;

(ii) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address and phone number of parts distributor; and expected delivery and installation date(s). After January 1, 1997, the original itemized document must be prepared by a Recognized Emissions Repair Technician of Texas before a Parts Availability Time Extension can be issued.

(C) A Parts Availability Time Extension is not allowed for tampering-related repairs, as defined herein.

(D) If the vehicle does not pass the emissions re-test prior to the expiration of the Parts Availability Time Extension, the applicant must provide to the department, adequate documentation that one of the following conditions exists:

(i) the motorist qualifies for a Minimum Expenditure Waiver, Low-Income Time Extension or Individual Vehicle Waiver; or

(ii) the motor vehicle will no longer be operated in the program area, as defined herein.

(E) A vehicle that receives a Parts Availability Time Extension in one testing cycle must have the vehicle repaired and re-tested prior to the expiration of such extension or must qualify for another type of waiver or time extension, in order to be eligible for a Parts Availability Time Extension in the subsequent testing cycle.

(F) The length of a Parts Availability Time Extension shall depend upon expected delivery and installation date(s) of the uncommon part(s) as determined by the department representative on a case by case basis. Parts Availability Time Extensions will be issued for either 30, 60 or 90 days.

(G) The department shall issue a unique time extension sticker for Parts Availability Time Extensions.

(4) Individual Vehicle Waiver. If a vehicle has failed an emissions test, a motorist may petition the director for an Individual Vehicle Waiver. Upon demonstration that the motorist has taken every reasonable measure to comply with the requirements of the vehicle emissions I/M program contained in the Revised Texas I/M SIP and such waiver shall have minimal impact on air quality, the director may approve the petition, and the motorist may receive a waiver. Motorists may apply for the Individual Vehicle Waiver each testing cycle.

(f) Prohibitions.

(1) No person may operate or allow to be operated any motor vehicle that does not comply with:

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection administered by the department, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP.

(2) No person or entity may own, operate, or allow the operation of a designated vehicle in a designated county unless the vehicle has complied with all applicable vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP.

(3) No person may issue or allow the issuance of a Vehicle Inspection Report (VIR), as authorized by the department, unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the Revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by the department and the TNRCC.

(4) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions inspection and maintenance requirements and procedures contained in the Revised Texas I/M SIP.

(5) No organization, business, person, or other entity may represent itself as an inspector certified by the department, unless such certification has been issued pursuant to the certification requirements and procedures contained in the Revised Texas I/M SIP and the rules and regulations of the department.

(6) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas or a Recognized Emissions Repair Facility of Texas, as defined in this subsections (h) and (i) of this section, without first obtaining and maintaining recognition by the department.

(g) Violation/Penalties. Pursuant to Texas Transportation Code, §548.601, any person who operates a designated vehicle in a designated county without displaying a valid unique emissions inspection certificate, may be subject to a fine in an amount not to exceed that set out in Texas Transportation Code, §548.604.

(h) Requirements for Recognized Emissions Repair Technicians of Texas. The department will recognize automotive repair technicians that meet the qualifications as set forth herein.

(1) In order to be recognized by the department as a Recognized Emissions Repair Technician of Texas, the technician must:

(A) have a minimum of three years full-time automotive repair service experience;

(B) possess current certification in the following areas based on the following tests offered by the National Institute of Automotive Service Excellence (ASE):

(i) Engine Repair (ASE Test Al);

(ii) Electrical/Electronic Systems (ASE Test A6);

(iii) Engine Performance (ASE Test A8); and

(iv) beginning January 1, 1998, Advanced Engine Performance Specialist (ASE Test Ll); and

(C) must be employed by a Recognized Emissions Repair Facility of Texas, as defined herein.

(2) A Recognized Emissions Repair Technician of Texas shall perform the following duties:

(A) complete and certify the VRF form(s); and

(B) notify the DPS in writing within 14 days of changes in the technician's ASE testing status.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein may result in the department ceasing to recognize the technician.

(i) Requirements for Recognized Emissions Repair Facilities of Texas.

(1) In order to be recognized by the department as a Recognized Emissions Repair Facility of Texas, the facility must:

(A) have at least one full-time Recognized Emissions Repair Technician of Texas, as described in Subsection (h) of this section; and

(B) possess equipment to perform the functionality of the following items:

(i) ammeter;

(ii) alternator, regulator or starting circuit tester;

(iii) battery load tester;

(iv) compression tester;

(v) cooling system tester;

(vi) dwellmeter;

(vii) engine analyzer;

(viii) exhaust gas analyzer (with at least hydrocarbon (HC), carbon dioxide (CO_2) measurement capability);

(ix) fuel pressure/pressure drop tester;

(x) ohmmeter;

(xi) propane gas bottle (carburetor lean drop check);

(xii) repair reference information;

(xiii) scan tool;

(xiv) tachometer;

(xv) timing light;

(xvi) vacuum/pressure gauge;

(xvii) vacuum pump; and

(xviii) volt meter.

(2) A Recognized Emissions Repair Facility of Texas shall:

(A) notify the DPS in writing within 14 days of changes in the facility's technicians' ASE testing status or employment status and the facility's equipment functionality status; and

(B) agree in writing upon application for recognition by the department to maintain compliance with the qualifications enumerated in subsection (i)(1) of this section, in order to maintain recognition by the department.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein, may result in the department ceasing to recognize the facility.

(j) Certified emissions inspection station requirements.

(1) In order to be certified by the department as an emissions inspection station, for purposes of the emissions I/M program, the station must:

(A) be licensed by the department as an official vehicle inspection station;

(B) comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department;

(C) complete all applicable forms and reports as required by the department;

(D) purchase or lease emissions testing equipment that is currently certified by the TNRCC to emissions test vehicles, or upgrade existing emissions testing equipment to meet the current certification requirements of the TNRCC;

(E) have a designated telephone line dedicated for each vehicle exhaust gas analyzer to be used to emissions test vehicles; and

(F) enter into and maintain a business arrangement with the Texas Datalink contractor to obtain a telecommunications link to the Texas Datalink System Vehicle Identification Database

(VID) for each vehicle exhaust gas analyzer to be used to inspect vehicles as described in the Revised Texas I/M SIP.

(2) Pursuant to Texas Transportation Code, §548.405, failure to comply with these rules may result in denial, suspension or revocation of an inspection station's certificate of appointment.

(k) Certified emissions inspector requirements.

(1) To qualify as a certified inspector, an individual must:

(A) be licensed by the department as an official vehicle inspector;

(B) must complete the training required for the Vehicle Emissions Inspection Program and receive the department's current inspector's certificate for such training;

(C) must comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department; and

(D) complete all applicable forms and reports as required by the department.

(2) Pursuant to Texas Transportation Code, §548.405, failure to comply with these rules may result in denial, suspension or revocation of a certified inspector's certificate.

(l) Inspection and Maintenance Emissions Testing Fees. The fees for emissions testing will be set by the TNRCC. The fee for an emissions test shall provide for one free re-test should the vehicle fail the initial emissions inspection, provided that the motorist has the re-test performed at the same inspection station where the vehicle originally failed and the re-test is conducted within 15 calendar days of the initial emissions test.

(m) Audits.

(1) The department is authorized to perform covert and overt audits pertaining to the emissions testing program.

(2) The department may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(n) Authority to publish manuals. The Public Safety Commission authorizes the director of the Department of Public Safety to promulgate, publish and distribute necessary manuals of instruction for the implementation of the emissions I/M testing program in a manner not inconsistent with these rules. Such manual(s) shall be available for public inspection at reasonable times at offices of the department as designated by the director.

Issued in Austin, Texas, on June 21, 1996.

TRD-9609086
James R. Wilson
Director
Texas Department of Public Safety
Effective date: July 1, 1996
Expiration date: October 29, 1996
For further information, please call: (512) 424–2890

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 5. Quarantines

General Provisions

4 TAC §§5.1-5.6

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.1-5.6, concerning general quarantine provisions. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.1-19.8 to replace these sections.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code (the Code), §§71.001, 71.002, and 71.003, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests; the Code, §71.005, which authorizes the collection of inspection fees for movement of plants into or out of a quarantined area; the Code, §71.114, which authorizes the collection of inspection fees for phytosanitary certification of vegetable plants; and the Code, §12.021, which authorizes the department to collect a fee for the issuance of a phytosanitary certificate.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.1. Definitions.

§5.2. Quarantine Inspection Requirements.

§5.3. Quarantine Inspection Certificates.

§5.4. Quarantine Inspection Fees.

§5.5. Fees for Issuance of Phytosanitary Certificate, Phytosanitary Growing Season Inspection Certificate.

§5.6. Expiration Provision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609222
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Pecan Weevil, Pecan Nut Casebearer, and Hickory Shuckworm Quarantine

4 TAC §5.21-5.26

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.21-5.26, concerning the pecan weevil, pecan nut casebearer, and hickory shuckworm quarantine. The

repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.120-19.123 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provide the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.21. Quarantine Pest.
§5.22. Free Areas.
§5.23. Quarantine Areas.
§5.24. Quarantined Products.
§5.25. Conditions Governing Movement of Quarantined Products.
§5.26. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609223
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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European Corn Borer Quarantine

4 TAC §§5.41-5.46

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.41-5.46, concerning the European corn borer quarantine. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.110-19.113 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provide the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.41. Pest.
§5.42. Areas under Quarantine.
§5.43. Infested Area.
§5.44. Commodities Covered.
§5.45. Restrictions.
§5.46. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609224
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Pine Shoot Beetle Quarantine

4 TAC §5.51

(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §5.51, concerning the pine shoot beetle quarantine. The repeal is proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.90-19.91 to replace the section.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeal is proposed under the Texas Agriculture Code (the Code), §§71.001, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.51. Adoption of Federal Quarantine.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Sweet Potato Weevil Quarantine

4 TAC §§5.61-5.63, 5.65-5.70, 5.72-5.75

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.61-5.63, 5.65-5.70, and 5.72-5.75, concerning the sweet potato weevil quarantine. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.130-19.133 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provide the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.61. Pest.

§5.62. Texas Weevil-Free Area.

§5.63. Regulated Areas.

§5.65. Restricted Materials.

§5.66. Conditions Governing Movement of Restricted Material.

§5.67. Conditions Governing the Issuance of Certificate Tags for the Movement of Restricted Material from the Regulated Areas.

§5.68. Bedding, Production, and Distribution of Sweet Potatos and Sweet Potato Slips in Weevil Free Areas.

§5.69. Penalties.

§5.70. Quarantined Pest.

§5.72. Quarantined Articles.

§5.73. Conditions Governing Movement of Quarantined Articles.

§5.74. Sweet Potato Cultivation in the Quarantined Area.

§5.75. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609226
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Lethal Yellowing Quarantine

4 TAC §§5.81-5.87

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.81-5.87, concerning the lethal yellowing quarantine. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.60-19.63 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provide the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.81. Pest.
§5.82. Regulated Area.
§5.83. Regulated Articles.
§5.84. Host Plants.
§5.85. Plants Closely Related to Host Plants.
§5.86. Conditions Governing Shipments.
§5.87. Penalties

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609227
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Caribbean Fruit Fly Quarantine

4 TAC §§5.121-5.125

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.121-5.125, concerning the caribbean fruit fly quarantine. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.40-19.43 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provide the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.121. Quarantined Pest.

§5.122. Quarantined Area.

§5.123. Quarantined Articles.

§5.124. Conditions Governing Shipments into Texas.

§5.125. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609228
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Burrowing Nematode Quarantine

4 TAC §§5.131-5.135

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.131-5.135, concerning the burrowing nematode quarantine. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.20-19.23 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provide the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.131. Quarantined Pest.

§5.132. Quarantined Area.

§5.133. Quarantined Articles.

§5.134. Qualifications.

§5.135. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609229
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Camellie Flower Blight Regulation

4 TAC §§5.141-5.144

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.141-5.144, concerning the camellia flower blight regulation. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.30-19.33 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provide the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which

authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.141. Quarantined Areas.
§5.142. Restricted Area.
§5.143. Conditions Governing Movement of Prohibited Products.
§5.144. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Citrus Seed, Citrus Budwood, and Citrus Nursery Stock Quarantine

4 TAC §§5.151-5.156

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.151-5.156, concerning citrus seed, citrus budwood, and citrus nursery stock quarantine. The repeals are proposed in order to allow for the proposal of new rules which will protect the citrus industry by preventing the artificial spread of dangerous insect pests and plant diseases. The department is proposing new §§21.1-21.8 to replace these sections.

Leslie McKinnon, coordinator for pest management programs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. McKinnon also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be to allow for the proposal of new sections which will result in the increased protection of the citrus industry from the threat of insect pests and diseases and the clarification of regulations governing the movement of restricted articles. The effect on small or large businesses will be the elimination of an exception which allowed the purchase of citrus stock from out-of-state sources. Wholesale citrus nurseries in Texas will benefit from this action through increased sales. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Leslie McKinnon, Coordinator for Pest Management Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of the Code; §71.007, which provides the department with the authority to adopt rules for the protection of agricultural and horticultural interests; the Code, Chapter 71, Subchapter A, which authorizes inspections, quarantines, and control and eradication zones for dangerous insect pests; and, the Code, Chapter 73, which provides the department with the authority to regulate citrus pests and quarantines.

The Texas Agriculture Code, Chapters 71 and 73 are affected by this proposal.

§5.151. Plant Diseases.
§5.152. Restricted Shipments.
§5.153. Restrictions on Citrus Seed Shipments.
§5.154. Shipment of Florida Miniature Citrus House Plants.
§5.155. Transportation Permits Required.
§5.156. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Deputy General Counsel
Texas Department of Agriculture
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Date Palm Lethal Decline

4 TAC §§5.191-5.197

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.191-5.197, concerning date palm lethal decline. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.50-19.53 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer

confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provide the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.191. Name of Disease.

§5.192. Regulated Area.

§5.193. Known Hosts.

§5.194. Regulated Articles.

§5.195. Intrastate Regulations.

§5.196. Requirements of Issuance of Permits.

§5.197. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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European Brown Garden Snail Quarantine

4 TAC §§5.300-5.303

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.300-5.303, concerning European brown garden snail quarantine. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.70-19.73 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.300. Quarantined Pest.

§5.301. Quarantined Area.

§5.302. Quarantined Articles.

§5.303. Conditions Governing Shipments into Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Imported Fire Ant Quarantine

4 TAC §§5.400-5.408

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§5.400-5.408, concerning the imported fire ant quarantine. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§19.100-19.103 to replace these sections.

David Kostroun, coordinator for plant quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in producer confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register* .

The repeals are proposed under the Texas Agriculture Code (the Code), §71.001 and § 71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§5.400. Quarantined Areas.

§5.401. Quarantined Articles.

§5.402. Exemptions.

§5.403. Conditions Governing Movements of Quarantined Articles.

§5.404. Conditions Governing the Movement of Quarantined Articles within Quarantined Areas.

§5.405. Disposition of Permits.

§5.406. Movement for Scientific Purposes.

§5.407. Inspection and Disposal.

§5.408. Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9609234

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-7583

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Chapter 7. Pesticides

4 TAC §§7.1, 7.3, 7.8, 7.10–7.16, 7.17–7.20. 7.22–7.26, 7.27–7.30, 7.31

The Texas Department of Agriculture (the department) proposes amendments to §§7.1, 7.3, 7.8, 7.17-7.20, 7.22-7.26 and 7.31, and new §§7.10-7.16 and 7.27-7.30, concerning pesticide regulations. The amendments, and new sections are proposed to make the department's pesticide regulations consistent with changes made by the 74th Texas Legislature during the Sunset process of the department. Other changes are made to update citations, including citations of newly renumbered sections, update terminology and clarify existing regulations. In addition, some sections are being repealed and renumbered, or replaced with new sections. The repeal of §§7.10-7.16 and 7.27- 7.35 is being filed as a separate submission. Substantive changes, including changes made to sections which are being repealed and renumbered are as follows.

The proposed amendment to §7.1 adds definitions deleted from §7.25 and updates the definition of Extension Service. The proposed amendment to §7.3(a)(3) increases the registration fee for pesticides distributed in the state. The proposed fee change is made pursuant to a legislative mandate requiring state agencies to set fees at levels adequate to recover costs incurred in administering regulatory programs. The proposed amendments to §7.8(b) delete the fee for one additional herbicide outlet to reflect the current herbicide law which no longer allows for two outlets at a single outlet fee and clarifies how a dealer must record distribution of a restricted use or state-limited-use pesticide to a nonlicensed person. Language already on forms that are required by the department is deleted.

Section 7.11 is being repealed and renumbered as new §7.10. In new §7.10, licensing subcategories are deleted and combined into individual categories. Section 7.12 is being repealed and renumbered as new §7.11. New §7.11 is changed to provide that, if an applicator's license becomes deficient and an applicator seeks to relicense, then the applicator must retest in all categories in which he seeks to be licensed. Section 7.13 is being repealed and renumbered as new §7.12. Language already on the forms that are prescribed by the department has been deleted. Section 7.14 is being repealed and renumbered as new §7.13. Changes in new §7.13 delete the requirement for social security numbers as required by federal statute and allow the use of Texas Driver's License numbers, allow for the optional use of a federal social security number if the applicant desires to use it, clarify that the proof of financial responsibility certificate would be one that would be only approved by the department, and allow a licensed commercial applicator to provide written notice on a form provided by the department that they are not maintaining proof of financial responsibility and that they will not operate as a commercial applicator applying or supervising restricted-use or state-limited use pesticides during the uncovered period, with a limited exception. This written notice must be received by the department prior to the cancellation of proof of financial responsibility required by this section. This subsection further provides for reinstatement of this license. Section 7.15 is being repealed and renumbered as new §7.14. Section 7.16 is being repealed and renumbered as new §7.15. This section requires applicators to use a form prescribed by the department and deletes the information that the applicator would be sending in as it is already described on the form.

Section 7.10 is being repealed and renumbered as §7.16. Changes in new §7.16 include information on the self- certification program and also allows private applicators to take a comprehensive exam instead of obtaining CEUs to obtain their recertification requirements. It also allows applicators who fail

the exam to retake it as often as necessary for $50 per exam. New 7.16 also deals with how the department will accredit activities, how sponsors will conduct accredited activities and how applicators recertify. Two new areas of acceptable accreditation, best management practices and drift minimization, are added. In addition, changes are made to clarify that sponsors must have prior approval from the department for all activities for which they wish to provide continuing education, eliminate burdensome and unnecessary paperwork by participants and sponsors as well as for the department, and to allow the faculty of the Texas Agricultural Extension Service (Extension) and the department to give up to three CEU credits without prior approval. Dates relating to the requirements for submitting course information for approval are also changed. A sponsor will be required to have an application to the department 30 days prior to the course instead of 90 days, and the response from the department has been lessened from 30 days to ten days from receipt by the department if the application is complete. Other changes eliminate information that is already required on forms prescribed by the department. New language is added to this section to notify commercial and noncommercial applicators and private licensed and certified applicators that effective January 1, 1996, the department began a self-certification program for CEUs. Commercial and noncommercial applicators will be required to obtain a minimum of one hour each from two of the following categories: IPM, laws and regulations and drift minimization. Private applicator certificate holders will be allowed to meet CEU requirements after December 31, 1995, if they apply for a license. Private applicators will also have an option to take and pass an examination in lieu of recertifying through continuing education. Other changes clarify the amount and type of credit earned and other information required to be given by the activity sponsor to the applicator for self-certification purposes, identify information required under the self- certification program, clarify penalties, and clarify that the recertification period for CEUs for commercial and noncommercial applicators is no longer three years but one year.

The proposed amendments to §7.17 change the license expiration date and clarify language regarding failure to file a timely and complete application. Proposed amendments to §7.19 clarify that a business or individual who may not be licensed as a commercial applicator may register equipment owned by the company or individual as equipment to be used in commercial applications. Proposed amendments to §7.24 delete 2,4,5- Trichlorophenoxyacetic acid (2,4,5-T), 2-(2,4,5-trichlorophenoxy) propionic acid (silvex), and orthoarsenic acid (arsenic acid) from the list of state-limited-use pesticides because those pesticides have been banned by the Environmental Protection Agency and are no longer distributed for use.

Proposed amendments to §7.25(a) delete language that is no longer applicable due to the more stringent federal worker protection standard (WPS) rule that does not allow casual reentry into a treated area for workers. The federal rule does have exceptions, but these exceptions require additional training of workers and for specific tasks only as approved by EPA. New language is added to this section that makes it very clear that agricultural establishments must follow all label directions for reentry, personal protective equipment, employee notification of applications where appropriate, and other WPS requirements. This subsection also addresses the repeal of §7.27 (Worker Reentry Into Fields), §7.28 (Reentry Instructions) and §7.30 (Reentry Intervals). These practices are no longer an option under the federal WPS rule. Sections 7.25, 7.27, 7.28 and 7.30 deal with labor intensive work and reentry into a treated area. The WPS rule does not allow reentry during the restricted-entry interval for labor intensive tasks. Therefore, these sections (7.27, 7.28, 7.30) are being repealed and addressed in §7.25 (a), which requires full observance of WPS by agricultural employers as required under the WPS rule. Old subsection (b) is deleted and replaced with WPS card verification requirements from §7.35. Subsection (c) is deleted as it addresses §7.27 and §7.30. This subsection is replaced with language dealing with the flag/sign to be used in providing prior notification under §7.26 and posting under the WPS rule. All definitions are deleted from §7.25, and those that are still applicable have been moved to §7.1.

The proposed amendments to §7.26, subsections (c)(3) and subsection (f) are deleted due to the change in the standardization of prior notification requirements that makes it easier and more consistent for all people who want prior notification to request notification. The reference to adjoining neighbor in subsection (g)(1) is deleted as any person wishing prior notification, regardless of adjoining land, may receive prior notification if they are within 1/4 mile of an application site. Subsection (g)(2) is changed to continue the same system of notification for persons requesting prior notification due to a medical condition. Subsection (d) has been changed to add that the person requesting prior notification must notify the farmer that they are requesting prior notification due to medical condition in order to receive notification pursuant to subsection (g)(2). Subsection (i) is changed to provide that notice must be given on the day before a scheduled pesticide application but emergency provisions still remain in place. Section 7.29 is being repealed and renumbered as new §7.27. Section 7.32 is being repealed and renumbered as new §7.28. Section 7.33 is being repealed and renumbered as new §7.29. The terms "sold or transferred" are changed to "distribute" throughout new §7.28 and §7.29 to use common terminology. Section 7.29(d) is changed to delete unnecessary language and clarify that all applicators must undertake training to use M-44 devices. Section 7.34 is being repealed and renumbered as new §7.30. Subsection (d) provides that a person who has been trained under WPS as a handler will satisfy the training requirements for nonlicensed persons working under the supervision of a licensed applicator. The proposed amendments to §7.36 change the expiration date for Chapter 7 from August 31, 1996 to August 31, 2000. This will set a date in the future by which the department shall review and amend, repeal or reaffirm sections in Chapter 7.

Glenna Hastings, chief financial officer for the department, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. There will be an increase in state revenue due to the increase in the pesticide registration fee found at §7.3(a)(3). The effect on state government will be an estimated increase in revenue of $1,012,575 for fiscal year(FY)1997, $895,950 in FY 1998, $763,500 in FY 1999, $895,950 in FY 2000, and $763,500 in FY 2001. All other fees will remain at their current levels. There will be no effect on local government.

Donnie Dippel, assistant commissioner for pesticide programs, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be pesticide regulations that are more understandable and consistent with state and federal law, and that provide more protection to the public, those working in or otherwise affected by the regulated industry, and to the environment. There will be an effect on small and large businesses and individuals who register products with the department. The impact to these will be an increase in the product registration fee of $150 for a two-year registration. The total impact on these registrants will depend on the number of products registered. There is no other anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Donnie Dippel, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. The department will hold public hearings to receive public comment on the proposal. Notice of these hearings will be published in the *Texas Register*.

The amendments and new sections are proposed under the Act, §76.004, which provides the Texas Department of Agriculture with the authority to regulate the use of pesticides and provides the department with the authority to adopt rules for carrying out the provisions of Chapter 76; the Act, §76.044, which provides the department with the authority to set and charge a fee for each pesticide registered with it; the Act, §76.073, which provides the department with the authority to fix and charge a fee for a dealer license; the Act, §§76.106, 76.108, and 76.112, which provide the department with the authority to fix and collect a fee for applicator testing and licensing of commercial and private applicators.

The Act, Chapter's 12 and 76, are affected by this proposal.

§7.1. Definitions.

In addition to the definitions set out in the Act, §76.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Act-Texas Pesticide Control Act, codified at Texas Agriculture Code, Chapter 76 [(1981)].

Farm labor camp -Housing used by one or more seasonal, temporary, permanent, or migrant workers and accompanying dependents which are owned, operated, or managed by the farm operator or licensed by the State of Texas.

Farm operator -The person responsible for the overall control and management of the crop. Responsibility for the overall control and management of the crop may be transferred by contract to a second party. However, if the effective date of the transfer of responsibility is unclear, both the farm operator and the second party may be held liable for any violation of these regulations.

Person - Includes any individual, partnership, association, corporation, and any organized group of persons, whether incorporated or not.

Extension[Service]- Texas**Agricultural**[Agriculture] Extension Service.

§7.3. Registration of Pesticides.

(a) In addition to the requirements contained in the Act, Subchapter C (concerning registration), the application for registration of a pesticide shall include:

(1)- (2) (No change.)

(3) a fee of **$350**[$200] per product registered for a two year period. This fee may be prorated in accordance with subsection (h) of this section.

(b)-(i) (No change.)

§7.8. Authorized Pesticide Users and Pesticide Dealers.

(a) (No change.)

(b) Pesticide dealers. It shall be a violation for a pesticide dealer required to be licensed by the Act, Subchapter D (concerning licensing of dealers), to continue to distribute restricted-use or state-limited-use pesticides after December 31 of each year without first having renewed the pesticide dealer license in accordance with the Act.

(1) (No change.)

(2) All applicants must submit a license fee of $100 for each license requested. This fee will not be prorated. Dealers currently licensed under the Texas Herbicide Law, codified at the Texas Agriculture Code, Chapter 75 [(1981)], will not be required to pay an additional fee as long as the herbicide license covers only one outlet. [If the herbicide dealer's license is for more than one outlet, a license will be issued to one such outlet at no charge]. Each additional outlet licensed must pay the pesticide dealer's license fee.

(3) A pesticide dealer's license shall not be transferable. In case of a change in ownership [of a licensee's business], outlet, or facilities, a new application and fee are required.

(4) The records required to be kept by licensed pesticide dealers by the Act, §76.075, shall be kept [on a single form and kept] separate from the licensee's other sales records and shall contain:

(A)-(D) (No change.)

(E) if the distribution is made to a nonlicensed person acting under the authorization of a licensed or certified applicator **the dealer must also record**

[(i)] the name **and address** of the nonlicensed person to whom the restricted-use or state-limited-use pesticide is made available[, the address of the residence or principal place of business of that person as stated on a valid driver's license or other current state, county, or tribal identification document issued to the nonlicensed person; and

[(ii) verification that the restricted use or state-limited-use pesticide is made available to a nonlicensed person. This verification shall be accomplished by a statement signed by the licensed or certified applicator that the nonlicensed person is the duly authorized representative of the licensed or certified applicator and that the restricted-use or state-limited-use pesticide made available to the nonlicensed person will only be used by a certified or licensed applicator, or under the direct supervision of the licensed applicator. This statement may be made on a form prescribed by the department].

(5) Records of distribution shall be kept current and maintained at the place of business where distribution occurs as designated on the pesticide dealer's license. The record for each distribution shall contain all of the information as specified in paragraph (4) of this section. The licensee shall make these records available for inspection by the department upon request. The department may examine these records at any time during normal business hours or by written request require the licensee to submit a copy of these records **in the time period as specified by the request**.

(6) [Except as provided by §7.32 and §7.33 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements and M-44 Sodium Cyanide-State-Limited-Use Requirements),]**Restricted**[restricted] use or state-limited-use pesticides may only be distributed to licensed applicators, certified private applicators, persons acting under the direct supervision of a licensed applicator, persons authorized by a certified private applicator, or a licensed dealer. Persons authorized to purchase pesticides by a certified private applicator may not take delivery of pesticides in any type of distributing or transporting equipment ready for application.

§7.10. Applicator Certification.

(a) The department will certify commercial and noncommercial applicators in the following license use categories and subcategories:

(1) agricultural pest control:

(A) field crop pest control;

(B) fruit, nut and vegetable pest control;

(C) weed and brush control in pasture and rangeland;

(D) predatory animal control;

(E) farm storage pest control and fumigation;

(F) animal pest control;

(G) citrus pest control; and

(H) livestock protection collar application;

(2) forest pest control;

(3) ornamental plant and turf pest control:

(A) plant pest and weed control; and

(B) greenhouse pest control;

(4) seed treatments;

(5) right-of-way pest control;

(6) aquatic pest control:

(A) aquatic plant and animal pest control; and

(B) anti-fouling paint;

(7) demonstration and research;

(8) regulatory pest control;

(9) aerial application; and

(10) chemigation.

(b) Producers of agricultural commodities that complete the Extension training program for private applicators and obtain a passing score on the private applicator test may be certified in the following categories and subcategories listed in paragraphs (1)(A)-(G), (2), (3),(4), (6)(A), and (10) of subsection (a) of this section. A private applicator may be certified as an aerial applicator by obtaining a passing score on the aerial applicator category test. Private applicators will not be charged a test fee.

(c) The department will certify commercial, noncommercial and private livestock protection collar (LPC) applicators upon training and testing on the use of the sodium fluoroacetate (Compound 1080) livestock protection collar in accordance with §7.28 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements).

(d) The Texas Department of Health will certify noncommercial applicators involved in public health pest control which shall encompass the following subcategories:

(1) vector control;

(2) rodent control; and

(3) sanitation.

(e) Applicators involved in regulatory pest control or demonstration and research pest control will be licensed by the regulatory agency responsible for the category or subcategory of pest control for which the license is requested. Regulatory pest control or demonstration and research pest control licenses may be issued for any category or subcategory listed in this section.

(f) The department will only certify a commercial applicator in the ornamental plant and turf pest control and weed control subcategories if the applicant is a nurseryman as defined in §7.1 of this title (relating to Definitions), or if the applicator restricts application only to ornamental and turf plants at the production site.

(g) After completing training prescribed by §7.29 of this title (relating to M-44 Sodium Cyanide State-Limited-Use Requirements), the department will certify commercial applicators licensed in the predatory animal control subcategory and noncommercial applicators licensed in the predatory animal control subcategory, research and demonstration category, or the regulatory pest control category to use M-44 sodium cyanide.

(h) The department may enter into a memorandum of agreement with another state or a federal agency for reciprocity in certifying pesticide applicators.

§7.11. Licensing Requirements for Commercial and Noncommercial Applicants.

(a) All testing conducted by the department under the authority of the Act, §76.106, shall be designed to cover the information necessary for an applicant to demonstrate competency to use and supervise the use of restricted-use and state-limited- use pesticides in a safe and effective manner. Anyone who makes a passing score on the general pesticide applicator examination, the laws and regulations examination, and on one or more category tests will be eligible to be a certified applicator in those categories or subcategories for which a passing score was received and shall be licensed as soon as all other licensing requirements are met. An aerial or chemigation applicator must also be licensed in any category or subcategory in which an application is to be made. Applicators may license in the subcategory listed in §7.10(a)(6)(B) of this title (relating to Applicator Certification) by successfully completing a single test pertaining to the subcategory and related laws and regulations and fulfilling

other licensing requirements; however, applicators who license in this manner may not add categories without successfully completing the general pesticide applicator examination and the laws and regulations examination.

(b) A fee of $20 shall be required for testing each applicant in each license use category and subcategory, and must be paid before the test or tests are given.

(c) Individual test scores are valid for only twelve months.

§7.12. Commercial Applicator License.

(a) An application for an original or renewal commercial applicator license shall be filed with the department pursuant to the Act, §76.108, and shall be on forms prescribed by the department.

(b) Each application for an original or renewal commercial applicator's license must be accompanied by an annual license fee of $150.

(c) The licensee shall notify the department within 30 days of any change in the information provided as part of the application for a license under subsection (a) or (d) of this section.

(d) Each application for an original or renewal commercial applicator's license must verify proof of current financial responsibility as required by §7.13 of this title (relating to Commercial Applicator Proof of Financial Responsibility).

(e) A licensed commercial applicator who is eligible for recertification or annual license renewal and is in good standing may convert the license to a noncommercial license by making application to the department. The fee shall be waived for licensed commercial applicators that become employed by a governmental agency and are applying restricted-use and state- limited-use pesticides only in the line of public employment.

§7.13. Commercial Applicator Proof of Financial Responsibility.

(a) Bonds and liability insurance. In addition to the requirements of the Act, § 76.111, the department will accept a bond or a liability insurance policy as proof of financial responsibility, provided that the bond or liability insurance policy meets the following conditions:

(1) Amount and type of coverage. Each bond or liability insurance policy must, at a minimum, provide for limits of liability of $100,000 per occurrence for bodily injury and $100,000 per occurrence for property damage. A general aggregate policy at a minimum of $200,000 per occurrence may be accepted if a split limit policy is not available. These limits apply to both ground and aerial applicators. The insurance policy or bond may be written to cover one or more licensed applicators and those applicators working under their supervision. Each licensed applicator and anyone who applies pesticides under their supervision, must be covered by a form of financial responsibility that complies with this section and that provides financial responsibility for any occurrence of injury or damage resulting from the application of pesticides by such persons. Claims-made liability insurance policies will not be accepted by the department. If proof of financial responsibility is provided by insurance it must be a commercial policy with chemical drift coverage.

(2) Deductible. A bond or liability insurance policy with a deductible of not more than $1,000 will be acceptable to the department so long as the applicant has not failed to pay a deductible amount on a prior claim, in which case no deductible provision will be acceptable to the department.

(3) Extent of coverage. The bond or liability insurance policy must protect persons who may suffer damages or injuries as a result of the operations of the applicant whether the damage or injuries are caused by the applicant or persons working under their supervision. The coverage must include damages or injuries to real or personal property, including crops, plants, soils, bodies of water, or structures on land not being worked on by the applicator; or persons regardless of their location on or off the land being worked. Each insurance policy must contain a clear indication that such coverage is provided in the form of a pesticide and herbicide endorsement or similar chemical coverage endorsement or language acceptable to the department. If a bond or liability insurance policy specifically excludes a particular chemical from coverage, the applicator is not licensed to apply that chemical.

(4) Cancellation or reduction in coverage. A bond or liability insurance policy must include the endorsement approved by the Texas Department of Insurance for third party notification of cancellation or coverage change or other similar language that the surety or the insurer will notify the department of a cancellation or material change in the bond or policy.

(5) Suspension of license. A commercial applicator license will automatically be suspended and be invalid as a basis for operations if the full amount and extent of coverage required by this section is not maintained, except as provided in subsection (c) of this section. If the bond or policy falls below the prescribed minimum limits of liability for any reason, the licenses of all licensed applicators relying on that bond or policy for proof of financial responsibility are automatically suspended. A licensee may not operate as a commercial applicator during a period in which the minimum requirements for coverage are not maintained.

(6) Reinstatement of license. The license of a commercial applicator may be reinstated after the full amount and extent of coverage required by this section is obtained by the applicator and the applicator submits proof of financial responsibility to the department as required by §7.12 of this title (relating to Commercial Applicator License).

(7) Proof of financial responsibility. In order to prove compliance with the requirements of this subsection, an applicant must submit to the department either certification of a bond on a form approved by the department, or certification of a liability insurance policy by providing the name and telephone number of the insurance agent, the policy number and the expiration date of the policy on the application for a pesticide applicator's license or a renewal for a commercial pesticide applicator's license. No original application or application for renewal of a commercial applicator license will be deemed complete until the applicant has provided to the department the appropriate proof of financial responsibility.

(b) Certificates of deposit and letters of credit. The department will accept a certificate of deposit or a letter of credit from an applicant if the original instrument is submitted to the department and under the following conditions.

(1) Inability to obtain bond or liability insurance coverage. In order to be eligible to submit a certificate of deposit or letter of credit as proof of financial responsibility, an applicant must demonstrate annually to the department that the applicant cannot

reasonably obtain the bond or liability insurance policy specified in subsection (a) of this section. The department requires:

(A) if a bond or liability insurance policy is unavailable:

(i) at least three signed and notarized statements from non-affiliated insurance companies (at least two of which are eligible surplus lines carriers) or their agents that the applicant is unable to secure a bond or liability insurance policy in the full amount and extent of coverage required by subsection (a) of this section; and

(ii) a sworn statement from the applicator:

(I) that the inability of the applicator to obtain such coverage is not the result of the applicator's inability to apply pesticides properly, the applicator's past failure to apply pesticides properly, or the applicator's failure to supervise the application of pesticides in a proper fashion; and

(II) that he or she has not operated under authority of his or her applicator's license during a period of time when no bond or liability insurance policy was in effect to cover the operations; or

(B) if a bond or liability insurance policy in the full amount and extent of coverage required by subsection (a) of this section is available to the applicant but is not reasonably affordable:

(i) at least three signed and notarized statements from insurers or their agents of the quotes for the available policies; and

(ii) a sworn statement from the applicator:

(I) containing a history of the applicant's costs for the required coverage for the immediate past five years or, if the applicant has been licensed fewer than five years, for all years the applicant has been licensed; and

(II) affirming that the applicator has not operated under the authority of his or her applicator's license during a period of time when no bond or liability insurance policy was in effect to cover the operations;

(C) if the Texas Department of Insurance has made a determination that the liability insurance policy required by the Act, §76.111, subsection (a)(2), is not generally and reasonably available to commercial pesticide applicators, a certificate of deposit or letter of credit that otherwise meets the requirements of this subsection will be accepted by the department as proof of financial responsibility for the applicator.

(2) Certificate of deposit. The department will accept a certificate of deposit in the amount of $200,000 issued by a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation. The certificate of deposit must be made payable to the Texas Department of Agriculture, and the original of the certificate must be filed with the department. The certificate of deposit may not be used as collateral or pledged for any purpose.

(3) Letter of credit. The department will accept a letter of credit in the amount of $200,000 issued by a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation. The letter of credit must be an irrevocable standby letter of credit made in favor of the Texas commissioner of agriculture for the account of the applicant. Draws must be able to be made by the commissioner or by his designated agent by a sight draft referencing the number of the letter of credit. The letter of credit must be irrevocable for at least one year. The department will provide any applicant with a form for the letter of credit which is acceptable to the department. All other letters of credit are subject to specific approval by the department.

(4) Payment of claims. If a claimant contacts the department for payment of a claim against a licensed applicator who has provided a certificate of deposit or letter of credit as proof of financial responsibility, the department will not disburse funds or release a certificate or letter except by consent of the applicator or pursuant to court order. Prior to payment of such a claim or the release of a certificate of deposit, the licensed applicator must furnish the department with a list of all outstanding claims for which the certificate of deposit or letter of credit might have to respond.

(5) Suspension of license. Each commercial applicator license will automatically be suspended and be invalid as a basis for operations if the full amount of the certificate of deposit or letter of credit required by this section is not maintained, except as provided in subsection (c) of this section. A licensee may not operate as a commercial applicator during a period in which the full amount of the certificate of deposit or letter of credit is not maintained.

(6) Reinstatement of license. The license of a commercial applicator may be reinstated after the full amount of the certificate of deposit or letter of credit is obtained by the applicator, the applicator submits the original certificate of deposit or letter of credit to the department, and the department accepts the proof of financial responsibility submitted by the applicator.

(7) Extent of coverage. The certificate of deposit or letter of credit must protect persons who may suffer damages or injury as a result of the operations of the applicant whether the damage or injury is caused by the applicant or person working under his or her supervision. The coverage must include damage or injury to real or personal property, including crops, plants, soils, bodies of water, or structures not being worked on by the applicator; or persons regardless of their location on or off the land being worked. The certificate of deposit or letter of credit need not cover damages or injury to agricultural crops, plants, or land being worked on by the applicant.

(c) A licensed commercial applicator does not need to maintain proof of financial responsibility as required by this section if the applicator provides written notice on a form provided by the department that the applicator will not operate as a commercial applicator applying or supervising restricted-use or state-limited-use pesticides during an uncovered period. Such written notice must be received by the department prior to the cancellation of the proof of financial responsibility required by this section. Reinstatement of license will be accepted as provided for by subsection (a)(6) and (b)(6) of this section.

§7.14. Noncommercial Applicator License.

(a) Except as specified on the application form, an application for an original or renewal noncommercial applicator license filed with the department pursuant to the Act, §76.109, shall contain the same information as required for a commercial applicator license application by §7.12 of this title (relating to Commercial Applicator License).

(b) Nongovernmental applicants shall pay an annual license fee of $100 at the time of application. No fee will be charged for a license issued to employees of a governmental entity for applying pesticides as part of their official duties. Governmental employees who apply restricted-use or state-limited-use pesticides outside of their governmental employment must pay the $100 fee.

(c) Noncommercial applicator licenses will be issued only to persons who have qualified as certified applicators in the license use categories or subcategories for which the license is requested.

(d) It shall be the responsibility of the licensee to give written notice to the department within 30 days of any change of address or employment.

(e) A fee exempt noncommercial license issued to an employee of a governmental entity shall be returned to the department within 30 days of termination of employment. A fee exempt noncommercial applicator who is eligible for recertification or annual license renewal and who is in good standing may convert to a fee paid commercial or noncommercial license in appropriate categories without retraining or retesting by submitting a complete application and license fee within the six months of termination of public employment. A fee exempt noncommercial applicator who is eligible for license renewal or recertification and who is in good standing and transfers to another governmental entity may relicense in the appropriate categories within six months of the transfer without retraining or retesting.

(f) A fee paid noncommercial applicator who is eligible for recertification or annual license renewal and is not prohibited from receiving a license by the Act, §76.108(d), may convert the license to a commercial license by making application to the department, paying the required fee, and providing proof of financial responsibility.

§7.15. Private Applicators.

(a) An application for an original or renewal private applicator license shall be on a form prescribed by the department and accompanied by a license fee of $50. An application for renewal must be received by the department on or before the last day of February in the year in which license renewal is due.

(b) A private applicator certification or license may be revoked by the department if the applicator is not engaged in the production of an agricultural commodity.

(c) A licensed or certified private applicator must notify the department within 30 days of any change of address. Failure to provide such information may be grounds for suspension or revocation of a certification or license.

(d) An employee who qualifies as a private applicator under the Act, §76.112(c), is not considered to be providing equipment or pesticide when the employer is identified on the private applicator's certification license application or amendment thereof, and either:

(1) the pesticide or equipment is purchased by the private applicator using a check, cash, or account of the employer; or

(2) the private applicator is reimbursed by the employer for the equipment or pesticide.

§7.16 Applicator Recertification.

(a) All applicators must meet recertification requirements through continuing education activities.

(b) Continuing education activities may include lectures, panel discussions, organized video or film with live instruction, field demonstrations, or other activities approved by the department.

(c) Each activity must be accredited by the department. No activity may claim to be approved, accredited, or accepted by the department or use any other such term that would lead an applicator to believe that it has been approved by the department for recertification unless it is so accredited.

(d) The department shall assign no more than one continuing education credit unit for each hour of net actual instruction time for an accredited activity.

(e) To be eligible for accreditation, the department will require:

(1) that the activity have significant educational or practical content to maintain appropriate levels of competency;

(2) that the activity be conducted by a university, a governmental agency, an association with membership of 25 or more persons, or a private independent nonapplicator business;

(3) that each activity has a recordkeeping procedure for verifying applicator attendance using department forms or approved formats;

(4) that each activity be at least one hour of net instruction time;

(5) that activities cover one or more of the following topics pertaining to pesticides:

(A) label and labeling comprehension;

(B) safety factors;

(C) environmental consequences;

(D) pest features;

(E) integrated pest management strategies/pest management practices;

(F) pesticide factors;

(G) equipment characteristics;

(H) application techniques/drift minimization;

(I) laws and regulations; or

(J) business ethics; and

(6) the activity is able to comply with any applicable federal and state laws, including the Americans With Disabilities Act (ADA) requirements for access to activities.

(f) Prior accreditation shall not be required for applicator recertification courses of up to three continuing education credit units conducted by Extension faculty, department pesticide program staff and pesticide inspectors for any pesticide applicator, provided that all other requirements for course content and records are met. The department may enter into a memorandum of agreement with Extension regarding the specific requirements for applicator recertification.

(g) Department personnel may monitor all accredited activities, and all fees charged by the sponsor shall be waived for department personnel who monitor the recertification activity.

(h) The department may deny, revoke, or refuse to renew accreditation for any or all courses of a sponsor if the sponsor fails to file a timely activity report, fails to provide the quality of activity approved by the department, or fails to comply with any other requirements that are a basis for accreditation or that are a part of these rules.

(i) The department may enter into a memorandum of agreement with another state or non-profit professional society or association to recognize the state's pesticide applicator recertification or the society's professional recertification for satisfaction of the requirements of this section for commercial, noncommercial and private applicator recertification only if:

(1) the standards for recertification meet or exceed the standards for the one-year or five-year recertification periods as set out in this section; and

(2) the agreement reduces duplication of effort and does not increase the recordkeeping burden of the department.

(j) Each continuing education activity shall be accredited for one calendar year only.

(k) In order for a recertification activity to be accredited by the department, the sponsor must:

(1) submit a completed department-prepared application form;

(2) provide any additional material relevant to the activity which is requested by the department; and

(3) submit the application and information required by the department at least 30 days in advance of the first date of the activity. The department may waive the 30-day provision providing all other requirements are met. The department will respond to the sponsor within ten days of receipt of the application and approve, reject, or request additional information.

(l) Sponsors who wish to continue accreditation must file for renewal annually on a form prepared by the department.

(m) Sponsors of accredited activities shall:

(1) prepare a roster of applicators that attend the activity which contains the following information:

(A) name;

(B) address and phone number; and

(C) current license or certificate number.

(2) distribute a completion certificate at the time of the activity to applicators who successfully complete an activity, which shall indicate the name of the sponsor, the date, county and name of the activity, the amount and type of credit earned, and the assigned course number;

(3) send the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or approved formats; and

(4) ensure that each continuing education unit accredited be at least one hour of net instruction time.

(n) Governmental agencies may enter into an agreement with the department for annual submission of recertification records of agency employees attending a recertification program approved for the agency by the department.

(o) No credit will be given for time used to promote the sponsor or other activities of the sponsor or for time used for organizations, political, procedural, or other nonrelevant activities.

(p) Applicators will recertify through a self-certification program. Each applicator will be required to maintain the number of credits necessary to renew a license or certificate. Certificates of completion received from accredited activities must be maintained for a period of 12 months after the most recent renewal of their license or certificate.

(q) Each licensed commercial or noncommercial applicator must obtain five hours of CEUs annually. A minimum of one hour must be obtained from two of the following categories: integrated pest management, laws and regulations or drift minimization.

(r) Each commercial or noncommercial applicator must obtain at least five credits during the 12 months preceeding December 31 in order to recertify and renew a license for the following year. An applicator who becomes unlicensed in any licensing year may not be relicensed for 12 months unless all recertification credits required for the last year of licensing are completed. Until the 12 month period has elapsed, applicators are prohibited from retesting under §7.11 of this title (relating to Classification of Commercial and Noncommercial Licenses).

(s) Private applicators must recertify as follows.

(1) Each licensed private applicator must obtain 15 continuing education credits within a five year period including at least two credits in laws and regulations and two credits in integrated pest management, except that any private applicator with a recertification date that began prior to January 1, 1996, must obtain two credits in laws and regulations and one credit in integrated pest management.

(2) Each licensed private applicator must obtain 15 credits prior to February 28 of the year their license expires.

(3) Private applicators issued a certificate prior to January 10, 1989, may fulfill their recertification requirement on a one-time only basis by completing the Extension private applicator training program, attaining a passing score on the private applicator test, and obtaining a private applicator license. Certified private applicators who choose not to license but wish to maintain certification under a certificate issued prior to January 10, 1989, will be required to recertify as specified for private applicators in this subsection

(4) Private applicators may have the option of foregoing continuing education requirements for a recertification period by following these procedures:

(A) Take and pass a comprehensive examination administered by the department which will contain questions relevant to those topics which would be covered at various continuing education activities. A certificate of completion worth 15 continuing education units will be issued by the department upon a passing score being attained by the applicator.

(B) If the applicator fails the examination, subsequent attempts will be allowed until a passing score is attained. If a passing score is not attained, the applicator must obtain the required continuing education units pursuant to this subsection.

(C) A fee of $50 is required prior to each examination.

(t) Failure to comply with the continuing education requirement for commercial, noncommercial and private applicators will:

(1) result in nonrenewal of an applicator's license or certification until the necessary credits for continuing education are attained;

(2) require the applicator to take and pass comprehensive department examinations for general knowledge and for each category in which the applicator seeks to be licensed if the applicator does not recertify and renew in one year following the expiration of the license;

(3) require retraining of commercial, noncommercial and private applicators for categories or subcategories requiring special training if the applicator does not recertify and renew in one year following the expiration of the license; and

(4) subject a noncompliant applicator to administrative, civil or criminal penalties and/or license or certificate revocation, suspension, modification or probation for failure to comply with continuing education requirements or if the applicator operates under a license that has not been renewed.

(u) An applicator may seek credit for a continuing education activity that has not been submitted by the sponsor to the department, and the department will assign the number of credits for the activity when the activity is held by an out-of- state sponsor and the following applies:

(1) the activity contains course content of the highest standards;

(2) the activity is sponsored by an institution of higher education, a regional association, a national association, or the state or federal government;

(3) the applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of sponsor, instructor's name and address, proof of attendance, date, time, and place of the activity; and

(4) this information is submitted within 60 days after completion of the activity; or

(5) the activity is a course approved by a university, college, or other institution of higher education for credit towards a bachelors degree, and is an area directly related to the activities of commercial or noncommercial applicators, and the following applies:

(A) the applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of sponsor, instructor's name and address, proof of attendance, date, time, and place of activity; and

(B) this information is submitted within 60 days after completion of the activity.

(v) An applicator may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension shall be granted by the department if the applicator files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause means extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.

(w) Any person who is issued an initial license on or after September 1 in any year and has not been licensed at any time during the preceeding nine months, shall begin annual recertification requirements the following year and need not obtain any credits between September 1 and December 31 of that year. If credits are obtained during that period, they may be applied to the following year's requirements.

(x) Applicators licensed as both private and commercial or noncommercial applicators may satisfy requirements for private applicator recertification by meeting the recertification requirements for commercial and noncommercial applicators.

§7.17. Expiration and Renewal of Licenses.

(a) Each commercial and noncommercial applicator license expires on the last day of February of the year following the year in which it was issued. **Each private applicator license expires on the last day of February of the fifth year following the year in which it was issued.** [A complete application for renewal of a commercial or noncommercial applicator license must be filed with the Texas Department of Agriculture by January 31 of the year following the year in which the licensed was issued.] An application for a commercial or noncommercial license will be deemed complete when the applicator has met the requirements of **§7.12(a)** [§7.13(a)] of this title (relating to Commercial Applicator License) and **§7.14(a) of this title (relating to Noncommercial Applicator License)** and has filed the appropriate license fee. Additionally, in the case of a commercial applicator, a complete application must include the proof of financial responsibility required by the Act, §76.111.

(b) Failure to file a timely and complete application for renewal by the license expiration date subjects an applicator to a late fee under the Texas Agriculture Code, Chapter 12, and the Act. Applications of restricted-use or state-limited-use pesticides by any commercial or noncommercial applicator after the expiration date of the license and when a complete application has not been filed with the **department** [Texas Department of Agriculture] can subject the applicator to additional penalties [and could also result in the department's refusal to issue a license for the rest of the licensing year under the Texas Agriculture Code, §76.108. Similarly, applications of such pesticides by a commercial applicator without having proper proof of financial responsibility shall subject the applicator to sanctions under the Act].

(c) If a complete application for renewal of a commercial [or] noncommercial **or private** applicator's license is not submitted within one year after the expiration of the license, the license will be deemed to be terminated voluntarily and a renewal application will not be accepted. Before being licensed again, the applicator must meet the requirements for a new license[, including testing and any required training and continuing education units in the appropriate category].

(d) (No change.)

§7.18. Records.

(a)-(b) (No change.)

(c) Subsection (a) of this section shall not apply to application of Livestock Protection Collars or M-44 Sodium Cyanide. Recordkeeping requirements specified in **§7.28** [§7.32] of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar-State- Limited-Use Requirements) and **§7.29** [§7.33] of this title (relating to M-44 Sodium Cyanide-State-Limited-Use Re-

quirements) and record requirements specified in the United States Environmental Protection Agency approved labeling, shall apply to these pesticides.

§7.19. Registration and Inspection of Equipment.

(a) Application equipment used **for** [by] commercial **applications** [applicators], except pressurized hand- sized apparatus or any equipment or device for which the person applying the pesticide is the source of power or energy used in making pesticide application, must be registered with the **department**[licensing agency]. The **department** [agency] shall issue [to the licensee] a license decal to be attached to each such piece of equipment in a conspicuous place. The license decal will contain the following information:

(1)-(2) (No change.)

(b) **Notification shall be given to** [The licensee shall notify] the **department** [regulatory agency] of any equipment **ownership** changes and [remove] the license decal **must be removed** before giving up possession of the equipment.

(c) All application equipment used **for** [by] commercial **applications** [applicators] is subject to inspection by the **department** [regulatory agency] at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the inspector finds that it is not, the **department** [inspector] shall require the needed repairs or adjustments before allowing the use of such equipment.

§7.20. Complaint Investigation.

(a) Any person with cause to believe that any provision of the Act or this chapter has been violated may file a written complaint with the **department** [Texas Department of Agriculture]. The department will continue to accept either written or oral notification of a complaint, but may require that a complaint form be signed in order to conduct an investigation.

(b) Any person who has experienced or is alleging adverse effects from a pesticide application may file a written complaint with the **department** [appropriate regulatory agency]. Such complaint shall be subscribed by the complaining party and set forth in detail the facts of the alleged violation.

(c) The **department** [agency] will investigate the complaint and make a full written report.

(1) A preliminary report may be given to the parties directly involved in the incident. In cases where no apparent **violations** [adverse effects] can be documented, the **department** [agency] will give the information to the complaining party and cease the investigation.

(2) The final report will be made after all aspects of the case have been determined to the satisfaction of the **department** [investigating agency]. This report will be made available to the parties concerned upon written request. The final report will prevail over the preliminary report if a conflict should arise.

(d) The **department** [investigating agency] shall, as soon as possible, notify the applicator(s) believed to be responsible for the complaint and the owner or lessee of the land where the application occurred.

(e) The **department** [investigating agency] will not estimate monetary losses sustained.

(f) No finding of violation by the **department** [agency] will be premised solely on the uncorroborated statements of an anonymous or unidentified complainant, but all such complaints will be investigated routinely. For each such complaint, the **department**[agency] will determine the extent of investigation which is appropriate to address the complaint.

§7.22. Use Inconsistent with Label Directions.

It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with its label or labeling. Use inconsistent with the label includes, but is not limited to:

(1)-(2) (No change.)

(3) failure to observe reentry intervals, preharvest intervals, grazing restrictions, or worker protection requirements:

(A) it is the responsibility of the person in control of the commodity or site treated to be knowledgeable of and comply with the requirements of this **paragraph** [section];

(B) if a commercial applicator furnishes the pesticide, it is the commercial applicator's responsibility to notify the person in control of the commodity or site treated of the requirements of this section that pertain to **restricted- entry** [reentry] intervals, preharvest intervals, grazing restrictions, or worker protection requirements, prior to, or at the time of treatment by:

(i)-(iii) (No change.)

§7.23. State Plan for Certification of Applicators.

The Texas Department of Agriculture hereby adopts by reference the State of Texas Plan for Certification of Pesticide Applicators with appendices submitted by the department to the administrator of the Environmental Protection Agency pursuant to the requirements of 7 United States Code, §136(b)(2). **A copy of the plan may be obtained** [Such plan with appendices is available] upon request from the **department** [Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711].

§7.24. State-Limited-Use Pesticides.

(a) Because of their potential to cause adverse effect to nontargeted vegetation, all pesticide products containing the active ingredients as specified in this subsection, alone or in mixtures, shall be classified as state-limited-use pesticides when distributed in containers of a capacity larger than one quart for liquid material or two pounds for dry or solid material. If the products are marketed using metric measures, the classification applies to containers larger than one liter or one kilogram, respectively: 2,4-Dichlorophenoxyacetic acid (2,4- D); 2,4-Dichlorophenoxy butyric acid (2,4-DB); 2,4- Dichlorophenoxy propionic acid (2,4-DP); [2,4,5- Trichlorophenoxyacetic acid (2,4,5-T);] 2-Methyl-4-Chlorophenoxyacetic acid (MCPA); [2-(2,4,5-trichlorophenoxy) propionic acid (silvex);] 3,6-Dichloro-o-anisic acid (dicamba); 3,4-Dichloropropionanilide (propanil); [orthoarsenic acid (arsenic acid);] 5-bromo-3-sec-butyl-6-methyluracil (bromacil); and 2,4-bis(isopropylamino)-6-methoxy-s-triazine (prometon). Formulations containing the active ingredients previously listed in this subsection are exempt from being classified as state- limited-use pesticides if they meet one of the criteria listed in paragraphs (1) or (2) of this subsection:

(1) specialty fertilizer mixtures packaged in containers of 50 pounds or less that are labeled for ornamental use and registered

as required in the Texas Agriculture Act, Chapter 63 [(1981)], concerning commercial fertilizer;

(2) (No change.)

(b) Because of their potential to cause adverse effects to humans and nontarget animals, any and all pesticides and devices using the active ingredients sodium fluoroacetate (Compound 1080) and sodium cyanide, in any quantity, for livestock predation control are classified as state-limited-use pesticides. Additional requirements for the handling and use of Compound 1080 and sodium cyanide are provided at §7.28 and §7.29 [§7.32 and §7.33] of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar-State- Limited-Use Requirements; and the M-44 Sodium Cyanide-State- Limited-Use Requirements).

§7.25. Scope of Pesticide Application Standards.

(a) Purpose. The purpose of §§7.25- **7.27** [7.31] of this title (relating to Pesticides) **is** [shall be] to establish pesticide application standards designed to prevent unreasonable risk to human health and protect workers and others during the production of agricultural field crops. [If an agriculture employer is complying with all applicable provisions of the WPS then they will have satisfied the provisions of §§7.25, 7.27, 7.28, 7.30 and 7.31 of this title (relating to Scope of Pesticide Application Standards, Worker Reentry Into Fields, Reentry Instructions, Reentry Interval, and Establishing Reentry Intervals).]

(b) **Worker Protection Standard Training Verification Requirements. All certified and licensed applicators or trained trainers who conduct pesticide safety training must:** [Exemptions from regulations. Except as provided in §7.25(o) of this title (relating to Notification Requirements), these regulations do not apply to:]

(1) **maintain records of each trainee for five years. These records must include a copy of each dated class roster signed by the trainer and each trainee, with the verification card number issued to the trainee, and the city or county and state where the training occurred** [applications of pesticides inside structures and greenhouses; in personal yards and gardens; in connection with health-related or aquatic pest control and research programs conducted by or under the authority of governmental entities; and regulatory pest control];

(2) **issue EPA training verification cards only to trainees who have been trained in accordance with the requirements of the WPS, including the correct use of training materials developed or approved by EPA;** [pest control advisors, federal, state, and county employees, and others that the commissioner may deem eligible for exemption; and]

(3) **record trainee information on the verification cards, in ink or other indelible form;** [applications made to livestock.]

(4) issue EPA training verification cards that match EPA specifications or that comply with state variations from such specifications that have prior approval from EPA; and

(5) promptly respond to requests from EPA, state, or tribal agencies or agricultural employers for information concerning issued EPA training verification cards.

(c) [Limitation on the scope of these regulations. Section 7.27 of this title (relating to Worker Reentry into Treated Fields) and §7.30 of this title (relating to Reentry Intervals) apply only to labor-intensive activities. Examples of crops which ordinarily do not require a worker to perform labor- intensive activities are cotton, wheat, rice, hay or grazing crops, peanuts, rye, safflower, sesame, sorghum, corn, barley, sugarcane, soybeans, sugar beets, flax, oats, sunflowers, alfalfa, and guar.

[(d) Definitions. In addition to the definitions set out in the Texas Agriculture Code, Chapter 76, §76.001 (1981), and §7.1 of this title (relating to Definitions), the following words and terms, when used in these regulations, shall have the following meanings:

[(1) Adjoining. The term "adjoining" means directly contiguous to a field on which pesticides may be applied or which is separated from a field only by a road, railway, or utility right-of-way, or by a government-owned land corridor or waterway having a width of not more than 100 feet.

[(2) Appropriate protective clothing. The definition of appropriate protective clothing varies according to when a worker enters a field to perform labor-intensive activities. The following standards shall apply:

[(A) immediately after a pesticide application and before the pesticide dust has settled or spray has dried, appropriate protective clothing shall be protective clothing as specified for use by the applicator on the pesticide label, including a pesticide respirator if specified on the label;

[(B) following an application of pesticides enumerated in §7.30(c)(1)-(4) of this title (relating to Reentry Intervals), after the dust has settled or the spray has dried but less than 24 hours after pesticide application, appropriate protective clothing shall be the protective clothing specified for the applicator on the label. However, a pesticide respirator is not required;

[(C) more than 24 hours after application but before expiration of the reentry interval, appropriate protective clothing shall mean, at a minimum, a clean, loose-fitting one or two-piece garment of closely woven or impermeable material which affords entire body protection (except for the feet, hands, or head), head covering, boots or shoes or socks, and gloves impermeable to the pesticide residue for the period of time the gloves are worn (Examples of impermeable gloves are rubber, vinyl and plastic or rubber-coated, vinyl-coated, and plastic-coated gloves. Cloth, leather, and paper gloves are not acceptable.); or

[(D) in the event that a pesticide label does not contain specifications for protective clothing, appropriate protective clothing shall be, at a minimum, the clothing specified in subparagraph (C) of this paragraph and shall be worn whenever workers enter treated fields prior to expiration of the reentry interval.

[(3) Farm operator. The farm operator is the person responsible for the overall control and management of the crop. Responsibility for the overall control and management of the crop may be transferred by contract to a second party. However, if the effective date of the transfer of responsibility is unclear, both the farm operator and the second party may be held liable for any violation of these regulations.

[(4) Field. The term "field" includes any outdoor agricultural areas or nurseries, not otherwise exempted from these regulations, to which pesticides are scheduled to be applied, are being applied, or have been applied.

[(5) Labor-intensive activities. Labor-intensive activities are those activities requiring a worker to make substantial contact

with plants, soil or other sources of pesticide residue after application of a pesticide but before expiration of the applicable reentry interval. Examples of activities which may require workers to make substantial contact include commonly recognized crop-production, hand-labor activities such as harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, roguing and pruning. Provided, however, walking and/or standing in a treated field shall not be deemed to be substantial contact with soil if the worker is wearing boots or shoes or socks.

[(6) Person. The term "person" includes any individual, partnership, association, corporation, and any organized group of persons, whether incorporated or not.

[(7) Points of access. Points of access are places where workers ordinarily enter or leave a field. For the purpose of complying with these regulations, the farm operator may designate one or more points of access.

[(8) Reentry interval. A reentry interval is the period of time between the application of a pesticide and the time when persons may reenter the field without wearing appropriate protective clothing.]

[(9)] **The EPA WPS warning flag/sign.** EPA WPS warning flag/sign **referred to in WPS and §7.26 of this title (relating to Notification Requirements)** must look like the one pictured as follows. Additional information may be included on the warning sign, such as the name of the pesticide or the date of application, if it does not lessen the impact of the flag/sign or change the meaning of the required information. If the required information is added in other languages, the words must be translated correctly. The flag/sign must be at least 14 inches by 16 inches, and the letters must be at least one inch high.
Figure 1: 4 TAC §7.25(c)

[(10) Worker. A worker means any person, not otherwise exempted by these regulations, who enters a field for any reason associated with the growing, harvesting, or management of a crop and is engaged in labor-intensive activities with plants, soil, or other sources of pesticide residue.

[(11) Farm labor camp. Housing used by one or more seasonal, temporary, permanent, or migrant workers and accompanying dependents which are owned, operated, or managed by the farm operator or licensed by the State of Texas.]

§7.26. Notification Requirements.

(a) Responsibility. Except as provided in subsection **(n)** [(o)] of this section, the farm operator shall be responsible for meeting prior notification requirements.

(b) (No change.)

(c) Who may request. The following persons may request prior notification of a pesticide application:

(1) any person who works or resides in a building, house, or other structure located on land [adjoining and] within 1/4 mile of a field on which pesticides may be applied; **and**

(2) persons in charge of licensed day-care centers, primary and secondary schools, hospitals, inpatient clinics or nursing homes within 1/4 mile of the field on which pesticides are to be applied. The parent of a primary or secondary school student may for good cause request notification from the department if the person in charge of the school has refused to request notification. If the department determines that notification should be given, the department shall notify the farm operator to give notification to the person in charge of the school. [; and

[(3) any person with chemical hypersensitivities, allergies, or other medical conditions which may be aggravated by pesticide exposure and whose residence or place of employment is within 1/4 mile of the field on which pesticides are to be applied; provided there is attached to such request a licensed physician's signed confirmation of the medical condition.]

(d) Content of request. **Except as provided in subsection (n) of this section, requests** [Requests] for prior notification under [subsections (c)(1) and (2) of] this section shall be made in writing to the farm operator, and should include:

(1)-(4) (No change.)

(5) a request to be notified prior to the application of any pesticides to the area described in paragraph (4) of this subsection or the trade name and/or common chemical name of specific pesticides for which prior notification is requested **and;** [.]

(6) a request to be notified because of a medical condition that may be aggravated by pesticide exposure.

(e) (No change.)

(f) [Requests for notification under subsection (c)(3) of this section. These requests shall be filed with the nearest district office or Austin office of the Texas Department of Agriculture. The department shall closely review each request and the supporting documentation for accuracy and validity. If the department approves the request, the department shall promptly notify the appropriate farm operator of the requirement to give prior notification to the requesting person. Requests which are not approved shall be returned to the requesting party with a written statement explaining the reasons for the rejection.

[(g)] Length of effectiveness and commencement of notification. A request for prior notification shall be **effective** [in effect] through December 31 of the year that the request is received. A farm operator shall commence notifying a requesting party of scheduled pesticide applications within ten days of receipt of a request for notification. The department may extend the time to begin notifying a requesting party upon a showing of sufficient cause by the farm operator. The department shall notify the requesting party of any such extension.

(g) [(h)] Notification. The following methods may be used for giving notification of a scheduled pesticide application.

(1) **General requests. Except as provided by subsection (n) of this section if** [Adjoining neighbor. If] the request for notification is made pursuant to [subsection (c)(1) of] this section, the notification may be made by:

(A) raising a flag/sign.

(i) the EPA WPS posted warning flag/sign shall be raised to a height of at least approximately five feet, with the bottom of such flag/sign always at least two feet above the top of the crop, in or about the field to which pesticides are scheduled to be applied so that the flag/sign is located no farther than 650 yards from the nearest property line of any **person** [adjoining neighbor] requesting notification.

(ii) in the event of unusually tall crops, such as citrus, corn, or sugar cane, or limited access fields, the farm operator may raise a flag/sign at a distance greater than 650 yards from **the nearest property line of the party requesting notification** [an adjoining neighbor, if such neighbor is given written notice of the location of such flag/sign and the flag/sign is raised] on a permanent pole to a height visible **from the property line of the requesting party** [to the adjoining neighbor].

(iii) (No change.)

(B) -(C) (No change.)

(2) **Medical condition**[Medically affected]. If the request for notification is made pursuant to **a medical condition** [subsection (c)(3) of this section], notification **must** [may] be given in person or by telephone in English or, when appropriate, Spanish.

(A) If the farm operator is unable to reach a person entitled to notification under this **paragraph** [section] after making reasonable efforts, the farm operator may immediately notify the department by telephone of the following information:

(i)-(v) (No change.)

(B) (No change.)

(C) If the farm operator telephones the department between 8:00 a.m. and **5:00** [4:30] p.m., Monday through Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempts shall be maintained by the department.

(3)-(5) (No change.)

(h) [(i)] Content of notice. Notice given in writing, in person, or by telephone shall include:

(1)-(3) (No change.)

(i) [(j)] Time and receipt of notice. Notice shall be given not later than on the day **prior** [previous] to a scheduled pesticide application.

(1) Notice shall be deemed given pursuant to subsection **(g)** [(h)] (1) and (3) of this section:

(A)-(B) (No change.)

(C) as mutually agreed upon pursuant to an agreement authorized by subsection **(g)** [(h)] (1)(C) of this section.

(2) Notice shall be deemed given pursuant to subsection **(g)** [(h)] (4) of this section at the time of delivery of notification in person, by telephone, or by posting the required notice:

(A) (No change.)

(B) after the farm operator has made reasonable efforts to notify the requesting party by telephoning the requesting party at the number(s) **provided** [sometime] during the time(s) specified in the written request.

[(3) Notice shall be deemed given pursuant to subsection (h)(4) of this section at the time of delivery of notification in person, by telephone, or by posting the required notice.]

(j) [(k)] Emergency. Advance notice need not be given on the day before when an immediate application is required and time does not reasonably allow the giving of notice on the day before a pesticide application. Notice of an emergency application shall be given:

(1) by the method selected pursuant to subsection **(g)**[(h)] (1), (3) and (4) of this section as soon as reasonably possible before the application; or

(2) (No change.)

(k) [(l)] Removal of flags/signs. Flags/signs raised under this section should be removed or lowered within 24 hours after the reentry interval expires. However, in no event shall such flags/signs be left posted for more than 72 hours after the reentry interval has expired. In the event that a pesticide application is not made when scheduled, the flag/sign may be left posted until after the reentry interval has expired.

(l) [(m)] Duty to notify of address change. A person who has requested notice of a pesticide application under this section shall notify the farm operator promptly and in writing of any change of address or telephone number. Notice need not be given at any vacant structure or premises, or at any structure or premises which is not the place of residence or business of a person entitled to notice under this section.

(m)[(n)] All complaints filed under this section shall be reviewed and investigated by the department in the same manner as any other complaints filed under the **Texas** Administrative Procedure [and Texas Register] Act.

(n)[(o)] Applications by the Texas Boll Weevil Eradication Foundation or other areawide pest control program sponsored by a governmental entity.

(1) Responsibility. For applications made by the foundation as part of its boll weevil eradication program or other areawide pest control program sponsored by a governmental entity, the entity making the application or causing the application to be made is responsible for meeting prior notification requirements of this subsection. The farm operator is responsible for accepting requests for and providing prior notification in accordance with this section for applications made by the farm operator.

(2) Who may request. A request for notification of an application made by an entity covered by this subsection may be made by all of those persons listed in subsection (c) of this section. No request is necessary for prior notification of farm labor camps owned, managed or controlled by a farm operator and located on or within 1/4 mile of a field on which pesticides are to be applied by the foundation or other entity; provided that the farm operator is responsible for notifying the foundation or other entity of the presence of such labor camps.

(3) Filing and content of request. Requests made under this section shall be made in writing to the foundation or other entity or the farm operator and shall include all of the information required by subsection (d) of this section.

(4) Notification by farm operator. The farm operator is responsible for notifying the foundation or other entity covered by this subsection of any requests for prior notification received by the farm operator relating to an application that will be made or caused to be made by the foundation or other entity. The information must be provided to the foundation or other entity within 24 hours of its receipt by the farm operator. The information may be provided:

(A) by telephone at a telephone number obtained from the department;

(B) by forwarding the written request to the foundation or other entity in the U. S. mail at a mailing address obtained from the department; or

(C) by any other reasonable means, as long as the information is forwarded within 24 hours of its receipt.

(5) Request for notification by the foundation or other entity. Prior to the making of the first application in each calendar year, the foundation or other entity shall request that the farm operator notify it of any requests for prior notification already in effect for property on which the foundation or other entity will be making applications and of any future requests for prior notification on that property.

(6) Effective date and length of effectiveness of request. A request for prior notification under this subsection shall be in effect through December 31 of the year that the request is received. The foundation or other entity shall begin notifying the requesting party of scheduled pesticide applications within 10 days of receipt of a request for notification.

(7) Methods of notification and content of notice.

(A) Notification shall be provided as follows.

(i) Notification may be given in writing, by raising a flag/sign in the manner provided at (h)(1)(A) of this section, in person, by telephone in English or, when appropriate, Spanish, or by other means mutually agreed upon by the requesting party and the foundation or other entity. This agreement must be in writing and a copy filed with the department. For purposes of providing notice to medically affected persons or to licensed day care centers, primary and secondary schools, hospitals, inpatient clinics and nursing homes, "notification in writing" means other than by mail such as by posting a written notice on the requester's front door or at the requester's place of business.

(ii) If the foundation or other entity is unable to reach a person entitled to notification under this section after making reasonable efforts, the foundation or other entity may immediately notify the department by telephone of the following information:

(I) the name and telephone number(s) of the foundation or other entity;

(II) the name and telephone number(s) of the requesting party;

(III) the location of the field scheduled to be treated;

(IV) the intended date and approximate time of the pesticide application; and

(V) the trade and common chemical name of the pesticide.

(iii) The department shall maintain a record of the information provided by the foundation or other entity.

(iv) If the foundation or other entity telephones the department between 8:00 a.m. and 5:00 p.m., Monday- Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempt shall be maintained by the department.

(v) In addition to the methods of notification provided at this subparagraph, notification to farm labor camps may be provided in writing by placing a written notice on an on-site bulletin board or other central, on-site posting place which is readily accessible to labor camp residents.

(B) The notice shall include:

(i) the location of the field on which the application is to be made;

(ii) the intended date and approximate time of application;

(iii) the trade and common chemical name of the pesticide to be applied; and

(iv) who to contact for additional information.

(C) Notice shall be given no later than the day prior to a scheduled pesticide application.

(8) Emergency provision. Advance notice need not be given on the day before an application when an immediate application is required and time does not reasonably allow the giving of notice on the day before the pesticide application. Notice of an emergency application shall be given:

(A) by the method selected in accordance with subparagraph (7)(A) of this subsection as soon as reasonably possible before the application; or

(B) by telephone or in person to a medically- affected person as soon as reasonably possible, but not less than one hour before the application. However, an emergency application need not be postponed if after reasonable efforts by the foundation or other entity actual notice cannot be given.

(9) Duty to notify of address change. A person who has requested notice of a pesticide application under this section shall notify the foundation or other entity promptly and in writing of any change of address or telephone number.

§7.27. Forbidden Pesticide Practices.

The pesticide applicator shall be responsible for complying with the following standards:

(1) Direct spray forbidden. Pesticides may not be applied if persons not involved with the application of the pesticide are lawfully present in the area to be treated.

(2) Duty to stop application. The applicator shall stop the application of a pesticide if any person not wearing appropriate protective clothing lawfully enters the area to be treated.

(3) It is a violation of these regulations for any person employed by a farm operator to knowingly enter an area to which pesticides have been applied and the restricted-entry interval has not expired or to which pesticides are being applied without the authorization of the farm operator.

§7.28. Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements.

(a) Purpose. Any and all pesticides and devices using the active ingredient sodium fluoroacetate for livestock predation control shall be classified as state-limited-use, pursuant to the Act, §76.003.

(b) Definitions. In addition to the definitions set out in the Act, §76.001, and §7.1 of this title (relating to Definitions), the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) LPC applicator - A person who has obtained a license from the department as a private, commercial or noncommercial applicator or who has obtained a private applicator certificate and has fulfilled the requirements for livestock protection collar certification as set forth in this section. Private applicators may certify to use the livestock protection collar on property owned, leased, or rented by the person or the person's employer or under the person's general control. Employees of government agencies who apply collars in administration of official duties or persons that apply collars on their own or employer's property may obtain a livestock protection collar certification under a noncommercial license. Persons operating a business or employed by a business to apply livestock protection collars on the property of another for hire must obtain livestock protection collar certification under a commercial applicator license.

(2) Livestock protection collar - A collar-like device which has been filled with the active ingredient sodium fluoroacetate (Compound 1080) to control predation.

(3) Registrant agent - A representative of a registrant. Each registrant agent must be a licensed pesticide dealer, a licensed private, commercial or noncommercial applicator certified in the livestock protection collar subcategory, and approved by the department to distribute livestock protection collars to approved LPC applicators.

(4) Collar pool agent - A person designated by the department to operate a livestock protection collar pool. Each collar pool agent must be a licensed pesticide dealer, a certified private applicator certified in the livestock protection collar subcategory, or a licensed private, commercial, or noncommercial applicator certified in the livestock protection collar subcategory and approved by the department to distribute livestock protection collars to approved LPC applicators.

(c) Distribution requirements. Registrants, registrant agents and collar pool agents distributing livestock protection collars must meet the following requirements.

(1) Each registrant must obtain a license under the Act, §76.071, and comply with the provisions of §7.8 of this title (relating to Authorized Pesticide Users and Pesticide Dealers).

(2) Each registrant and registrant agent who distributes livestock protection collars must obtain a license as a private, commercial or noncommercial applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Each collar pool agent who distributes livestock protection collars must possess a private applicator certification and obtain certification in the livestock protection collar subcategory or obtain a license as a private, commercial, or noncommercial applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Collars shall be distributed only by registrants or agents and only to certified livestock protection collar applicators.

(3) Livestock protection collars may not be distributed by registrants or agents to persons other than registrants or agents for the purpose of resale or transfer.

(4) Each registrant may designate registrant agents and shall file with the department written notice of the name, home address, address of distribution site, and telephone number of each agent. The registrant shall notify the department of any change in this information within ten days. The department shall notify the registrant in writing if the agent is approved or disapproved.

(5) Each livestock protection collar shall have a unique serial number clearly and firmly affixed to it.

(6) Registrants and agents shall dispose of livestock protection collars strictly in accordance with label directions.

(7) Registrants and agents shall distribute the forms prescribed by the department for use by LPC applicators with each distribution of livestock protection collars.

(8) Registrants and agents shall report to the department any incident or complaints of misuse involving a livestock protection collar.

(d) Certification of LPC applicators.

(1) A person may obtain certification as either a private, commercial or noncommercial applicator.

(2) In order to obtain certification as a licensed commercial LPC applicator, a person shall comply with the licensing requirements of §7.12 and §7.13 of this title (relating to Commercial Applicator License and Commercial Applicator Proof of Financial Responsibility), complete livestock protection collar training, pass a test prescribed by the department, and pay the fee prescribed by §7.12 of this title (relating to Commercial Applicator License). The license expiration and renewal requirements of §7.17 of this title (relating to Expiration and Renewal of Licenses), apply to commercial LPC applicators.

(3) In order to obtain certification as a licensed noncommercial LPC applicator, a person shall comply with the licensing requirements of §7.14 of this title (relating to Noncommercial Applicator License), shall complete livestock protection collar training, pass a test prescribed by the department, and submit an application prescribed by the department and pay the fee prescribed by §7.14 of this title (relating to Noncommercial Applicator License).

(4) In order to obtain certification as a private LPC applicator, a person must possess a valid private applicator certificate or obtain a private applicator license in accordance with §7.15 of this title (relating to Private Applicators) and complete the livestock protection collar training program and pass a test prescribed by the department. No testing fee will be collected from private applicators.

(5) All LPC applicators must recertify as required by §7.16 of this title (relating to Applicator Recertification). Each LPC applicator is responsible for giving written notice to the department of any change of address. Government employees who hold a current fee exempt noncommercial license must surrender the license within 30 days of termination of government employment and may convert to a fee paid license if the certification is in force by making application to the department within six months of the termination date. Retraining and retesting may be required by the department for any LPC applicator who fails to comply with the use, recordkeeping, or other requirements of the department.

(e) LPC applicator training. LPC applicators must undergo training, including training in the following areas:

(1) the proper use of the livestock protection collar;

(2) the proper method of disposing of collars and contaminated materials;

(3) health and safety hazards, safe handling techniques, and emergency treatment in cases of accidental exposure;

(4) recordkeeping and reporting requirements;

(5) proper methods of identifying causes of predation; and

(6) approved methods of predator management.

(f) LPC applicator use restrictions. All LPC applicators shall comply with the label, including the use restrictions, when using the livestock protection collar. Copies of the label and applicator record forms shall be obtained with the purchase or transfer of any collar from a registrant or agent. Additional copies of the label and forms may be obtained from the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(g) Recordkeeping and reporting.

(1) Each registrant shall maintain records for the registrant and all registrant agents shall maintain records on forms prescribed by the department for at least two years which include:

(A) an inventory of Compound 1080 and an inventory of livestock protection collars including the serial number, size, type of straps, number of straps, and configuration for each collar. An annual production report shall be filed on forms prescribed by the department by each registrant by January 31 for the previous calendar year reporting on the number and type of livestock protection collars produced and distributed and on the quantity of Compound 1080 purchased and used;

(B) information on all distributions to applicators or agents, including:

(i) the date of distribution;

(ii) the name, telephone number, address, and applicator license number of each LPC applicator who purchased or received a collar;

(iii) the number of livestock protection collars distributed; and

(iv) the serial number of each collar.

(C) A record of all distributions of collars by a registrant or agent shall be submitted to the department monthly. A report is not required for months in which a distribution does not occur.

(2) Each collar pool agent shall notify the department monthly of all distributions of collars and shall maintain records for at least two years, including:

(A) the date of distribution or receipt of collars;

(B) the name, telephone number, address, and applicator license number of each LPC applicator who purchased, transferred, or received a collar;

(C) the number of livestock protection collars distributed;

(D) the serial number of each collar; and

(E) the names and addresses of collar pool members.

(3) Each LPC applicator shall maintain records on the use of the collar on forms prescribed by the department. The records shall include:

(A) the serial number of the collar attached to livestock;

(B) the pasture(s) where collared livestock were placed;

(C) the dates of each attachment, inspection, and removal;

(D) the number and locations of livestock found with ruptured or punctured collars and the apparent cause of the damage;

(E) the number, dates, and approximate location of collars lost;

(F) the species, locations, and dates of all animals suspected to have been killed by collars;

(G) all suspected poisonings of humans, domestic animals or nontarget wild animals resulting from collar use and all other accidents involving the release of Compound 1080; and

(H) number of collars in storage.

(4) Each LPC applicator shall maintain a copy of collar use records for at least two years.

(5) Each registrant, agent, or LPC applicator shall report accidents involving any suspected or actual poisoning of threatened or endangered species, humans, domestic animals or nontarget wild animals to the department immediately (within one working day) by telephone.

(h) Loading Compound 1080 into collars. Only the registrant or the collar manufacturer is authorized to fill collars with Compound 1080 solution. Only Compound 1080 purchased from the registrant after November 1, 1986, and containing a distinguishing dye, may be used in the livestock protection collar.

(i) Instructions to noncertified applicators working under the supervision of a licensed LPC applicator. The licensed LPC applicator shall give appropriate verifiable instructions on the use of the collar to a noncertified person as required by §7.30 of this title (relating to Supervision) before the noncertified person may handle the collar. Licensed commercial LPC applicators must be physically present to supervise use of collars by noncertified applicators. Certified private applicators authorized to apply collars may not supervise any person using collars.

§7.29. M-44 Sodium Cyanide-State-Limited-Use Requirements.

(a) Purpose. Any and all pesticides and devices using sodium cyanide as the active ingredient, including the M-44 device for livestock predation control, shall be classified as state-limited-use pesticides, pursuant to the Act, §76.003. However, this section shall not apply to the use of M-44 sodium cyanide by employees of the Texas Animal Damage Control Service when performing official duties and using M-44 cyanide capsules under the federal government registration.

(b) Definitions. In addition to the definitions set out in the Act, §76.001 and §7.1 of this title (relating to Definitions), the following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Authorized dealer - A dealer licensed under the Act, §76.071, and specifically approved by the department to distribute M-44 sodium cyanide.

(2) M-44 applicator - A person who has obtained authorization from the department for the use of M-44 sodium cyanide.

(3) M-44 sodium cyanide - Includes the active ingredient sodium cyanide, sodium cyanide capsules, and any device loaded with sodium cyanide for use in livestock predation control.

(c) Distribution requirements. Dealers distributing M-44 sodium cyanide must meet the following requirements.

(1) All dealers who wish to distribute M-44 sodium cyanide must obtain written approval by the department. In order to obtain approval to handle M-44 sodium cyanide from the department, dealers must obtain from the department a pesticide dealer's license to handle restricted pesticides and complete special agreement forms to become an authorized dealer for the purpose of distributing M-44 sodium cyanide. All dealers must meet the dealer requirements of the Act, §§76.071-76.077, the requirements of §7.8 of this title (relating to Authorized Pesticide Users and Pesticide Dealers), and any additional federal requirements of the use restriction bulletin (label) for M-44 sodium cyanide under EPA Registration No. 33858-2.

(2) An authorized dealer may distribute M-44 sodium cyanide only to M-44 applicators or registrants of M-44 sodium cyanide. M-44 sodium cyanide may not be distributed or transferred by a dealer to any person for the purpose of resale or transfer with the exception of registrants.

(3) The department will keep a list of approved dealers and make it available to all certified applicators. Only dealers whose names appear on the list are authorized to receive or distribute M-44 sodium cyanide.

(4) Each authorized dealer must be or employ a person certified under this section.

(5) Each dealer must maintain for a period of two years complete records on forms prescribed by the department of all transactions involving M-44 sodium cyanide, including:

(A) the amount of materials purchased by dealer and date of purchase;

(B) the following information for each distribution:

(i) the date of distribution;

(ii) the name, address, applicator number, county, and telephone number of any M-44 applicator to whom M-44 sodium cyanide was distributed; and

(iii) the amount distributed to the approved applicator.

(6) Dealers must make sure that any distribution of M-44 sodium cyanide is accompanied by a complete label. Authorized dealers must also provide to M-44 applicators the recordkeeping forms prescribed by the department. Authorized dealers may distribute sodium cyanide capsules only in boxes of ten each, in boxes of 25 each, or in boxes of 50 each.

(7) Authorized dealers must obtain the department's approval prior to purchasing any M-44 sodium cyanide.

(8) Each authorized dealer must report to the department any incident or complaint of misuse involving M-44 sodium cyanide.

(d) M-44 applicators. Any person seeking to qualify as an M-44 applicator must possess a current private applicator certification or license, or a noncommercial applicator license with certification in the predatory animal control subcategory, regulatory pest control category or demonstration and research category, or a commercial applicator license with certification in the predatory animal control subcategory. All applicators must undertake training prescribed by the department and obtain a certificate for M-44 use.

(1) Training for M-44 applicators will include the following:

(A) the proper use and treatment of the M-44 sodium cyanide;

(B) the proper method of disposing of M-44 sodium cyanide and related contaminated materials;

(C) safe handling techniques designed to reduce health and injury risks;

(D) recordkeeping requirements;

(E) proper methods of identifying causes of predation; and

(F) approved methods of predator control.

(2) All M-44 applicators must comply with the label including the use restrictions bulletin on M-44 sodium cyanide issued by the department (EPA Registration No. 33858-2) when using M-44 sodium cyanide. Copies of the use restrictions must be obtained with the purchase of each box of M-44 sodium cyanide. Additional copies of the bulletin and recordkeeping forms may be obtained from the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(e) Recordkeeping. Each applicator shall maintain records on forms prescribed by the department dealing with the placement of the device and the results of each placement. Such records shall include, but may not be limited to:

(1) the number of M-44 sodium cyanide devices in place;

(2) the location of each M-44 sodium cyanide device;

(3) the dates of each placement, inspection, and removal;

(4) the number and location of M-44 sodium cyanide devices which have been discharged and the apparent reason;

(5) species of animals taken; and

(6) all accidents or injuries involving humans, domestic animals, wildlife, or bodies of water.

§7.30. Supervision.

(a) If there is a discrepancy between supervision requirements between federal laws or regulations, state laws or regulations, or the pesticide label, the supervision requirement that requires the greatest degree of direct supervision by the licensed applicator must be practiced. Licensed applicators may only supervise application of pesticides for categories or subcategories in which they are certified.

(b) A business that applies a restricted-use or state- limited-use pesticide to the land of another for hire must be operated by or employ a licensed commercial applicator. An application

of a restricted-use or state-limited-use pesticide can only be made by the licensed commercial applicator or by persons under the licensee's direct supervision during which time the licensee must be continuously physically present. A person may apply a restricted-use or state-limited-use pesticide under the direct supervision of a licensed commercial applicator only if the person is under the instruction and control of the commercial applicator and the commercial applicator is on the site where the application of the pesticide is being made and can observe and converse with the person under supervision. A licensed commercial applicator is responsible for the actions of any person working under the licensee's direct supervision. A licensed commercial applicator is not required to be continuously physically present during the transporting of a restricted-use or state-limited-use pesticide in any type of distributing or transporting equipment ready for application, mixing, loading, storing, and handling in packages or containers that have been opened, disposing of pesticides, and/or the cleaning of equipment used in the application of pesticides by a person working under the direct supervision of that licensed applicator. The licensee must, however, assure that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual, as specified in subsection (d) of this section.

(c) A licensed noncommercial applicator or licensed private applicator is not required to be physically present at the time and place of a pesticide application to exercise direct supervision of application of a restricted use or state-limited- use pesticide, but the licensed noncommercial or private applicator must always be available when and if needed. The licensed applicator is responsible for any person working under the licensee's direct supervision.

(d) Each licensed applicator is responsible for assuring that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual. Working includes transporting a restricted-use or state-limited-use pesticide in any type of distributing or transporting equipment ready for application; mixing, storing and handling in packages or containers that have been opened; and applying and disposing of restricted-use or state-limited-use pesticides and cleaning equipment used to apply the pesticide. At a minimum, instructions shall include a review of appropriate sections of the Texas pesticide law and the Texas pesticide regulations, and reading of complete labeling information for the particular use of the pesticide product being applied. To verify that appropriate instructions have been given to a nonlicensed person, the licensed applicator must verify or provide handler training to the nonlicensed applicator in accordance with the requirements of WPS.

(e) A private applicator may not supervise the use of restricted-use or state-limited-use pesticides by an unlicensed or noncertified applicator unless the private applicator has completed the Extension private applicator training program, obtained a passing score on the private applicator examination, and obtained a private applicator license from the department as specified in the Act, §76.112. §7.31. Expiration Provision. Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, **2000**[1996].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 3, 1996.

TRD-9609574
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7583

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4 TAC §§7.10–7.16, 7.27–7.35

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§7.10-7.16 and 7.27-7.35, concerning pesticide regulation. The repeals are proposed to allow the department to revise and organize Chapter 7 to make the chapter consistent with changes made by the 74th Texas Legislature (1995), update citations, update terminology and clarify the regulations. In addition, the repeal of §§7.27, 7.28, and 7.30 are proposed to make the departments regulations consistent with current federal law and regulations.

Donnie Dippel, assistant commissioner for pesticide programs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Dippel has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the repeals will be pesticide regulations that provide more protection to the public, those working in or otherwise affected by the regulated industry, and to the environment. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Donnie Dippel, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. The department will hold public hearings to receive public comment on the proposal. Notice of these hearings will be published in the *Texas Register.*

The repeals are proposed under the Texas Agriculture Code, §76.004, which provides the Texas Department of Agriculture with the authority to regulate the use of pesticides and provides the department with the authority to adopt rules for carrying out the provisions of Chapter 76.

The Texas Agriculture Code, Chapters 12 and 76, are affected by this proposal.

§7.10. Applicator Recertification.
§7.11. Applicator Certification.

§7.12. Classification of Commercial and Noncommercial Licenses.

§7.13. Commercial Applicator License.

§7.14. Commercial Applicator Proof of Financial Responsibility.

§7.15. Noncommercial Applicator License.

§7.16. Private Applicators.

§7.27. Worker Reentry Into Fields.

§7.28. Reentry Instructions.

§7.29. Forbidden Pesticide Practices.

§7.30. Reentry Interval.

§7.31. Establishing Reentry Intervals.

§7.32. Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements.

§7.33. M-44 Sodium Cyanide-State-Limited-Use Requirements.

§7.34. Supervision.

§7.35. Worker Protection Standard Training Verification Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7583

Chapter 9. Plant Quality

Nursery and Floral Products

4 TAC §§9.1, 9.2, 9.4-9.6

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§9.1-9.2 and 9.4-9.6, concerning nursery and floral products. The repeals are proposed to allow for the proposal of new sections to clarify existing language in the current regulations and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§22.1-22.6 to replace these sections.

David Kostroun, coordinator for Plant Quality Programs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a reduction in industry confusion concerning regulatory requirements and facilitation of effective administration of nursery and floral programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, §71.042, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the immunity and protection of plants from diseases and insect pests; and the Texas Agriculture Code, §71.043 which authorizes the department to collect annual nursery and floral registration fees.

The Texas Agriculture Code, Chapter 71, Subchapter B is affected by this proposal.

§9.1. Definitions.

§9.2. Violations and Penalties .

§9.4. Inspection .

§9.5. Registration .

§9.6. Nursery/Floral Registration Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Rose Grades and Regulations

4 TAC §§9.10-9.14

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§9.10-9.14, concerning rose grades and regulations. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §§23.1-23.6 to replace these sections.

David Kostroun, Coordinator for Plant Quality Programs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in industry confusion concerning regulatory requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, §121.001 which provides the Texas Department of Agriculture with the authority to adopt rules and prescribe procedures for the inspection, grading, and labeling of all rose plants sold or offered for sale within this state.

The Texas Agriculture Code, Chapter 121 is affected by this proposal.

§9.10. Definitions.
§9.11. Growers.
§9.12. Labeling.
§9.13. Grade Sizes.
§9.14. Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
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Plant Quality

4 TAC §9.40

(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §9.40, concerning expiration provision. The repeal is proposed in order to allow for the proposal of new sections. The department is proposing new §§22.6 and 23.6 to replace this section.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be a reduction in industry confusion concerning regulatory requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code (the Code), §71.042, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the immunity and protection of plants from diseases and insect pests; and the Code, §121.001, which provides the department with the authority necessary to adopt rules and prescribe procedures for the inspection, grading, and labeling of all rose plants sold or offered for sale within this state.

The Texas Agriculture Code, Chapter 71 and Chapter 121, are affected by this proposal.

§9.40. Expiration Provision

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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Chapter 9. Seed Quality

The Texas Department of Agriculture (the department) proposes new §9.1–§9.7, 9.12, and 9.13, concerning the administration of the Texas Seed Law. The new sections are being relocated from Chapter 19 of this title as part of the department's reorganization of it's regulatory rules. The purpose of the new sections is to furnish the seed purchaser with truthful information on the tag or label to give favorable returns on seed investment; to help decide whether the stock is the best obtainable for the money; to increase the net income for farm families by more careful seeding and seed production methods; to eliminate the selling of inferior seed with large weed seed content.

Charles Leamons, director for seed quality, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. All fees imposed under these sections will remain at their current levels.

Mr. Leamons also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify and eliminate the burden of compliance to antiquated rules. There will be no effect on small businesses. There is no anticipated

economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Charles Leamons, Director for Seed Quality, Texas Department of Agriculture, P. O. Box 629, Giddings, Texas 78942. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

Definitions

4 TAC §9.1

The new section is proposed under the Texas Agriculture Code (the Code), §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the efficient enforcement of Chapter 61 and to establish standards of genetic purity and identity; the Code, §61.009, and §61.011, which provides the department with the authority to charge fees for testing of seed for purity and germination and for issuance of an agricultural seed inspection permit or Texas tested seed labels; and the Code, §61.013, which provides the department with the authority to charge a fee for a vegetable seed license .

The Texas Agriculture Code, Chapter 61, is affected by the proposal.

§9.1. Definitions.
In addition to the definitions in the Texas Agriculture Code, Chapter 61, § 61.001 (1981), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act - Texas Seed Law, Texas Agriculture Code, Chapter 61 (1981).

Brand - A word, name, symbol, number, or design used to identify seed of one person to distinguish it from seed of another person as an indication of source, and not to indicate the genetic identity of the seed.

Cultural practice - The control of weeds by either mechanical or chemical means or a combination of both.

Germination - In seed laboratory practice, the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

Hybrid - The first generation of seed of a cross produced by controlling the pollination and by combining two or more inbred lines; one inbred or a single cross with an open pollinated variety; or two selected clones, seed lines, varieties, or species. The second generation or subsequent generations from such crosses shall not be regarded as hybrids.

Inspection fee - A fee paid by any person who sells, offers, exposes, or otherwise distributes for sale agricultural seed for planting purposes.

Kind - One or more related species or subspecies which singly or collectively is known by one common name (example: corn, oat, alfalfa, and timothy).

Licenses - Includes all Texas Tested Seed Labels, Reporting Systems Permits and Vegetable Seed Licenses.

Lot - A definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

Noxious weed seed - Seeds, bulblets, or tubers of certain species designated by the Texas Seed Law Regulations and considered highly objectionable and difficult to eradicate. Noxious weed seeds are divided into two classes, prohibited and restricted defined as follows:

(1) Prohibited noxious weed seeds are the seeds or bulblets of weeds that reproduce by seed and/or spread by underground roots, stems, and other reproductive parts, and which, when established, are highly destructive and difficult to control by ordinary good cultural practice;

(2) Restricted noxious weed seeds are the seeds of such weeds that are objectionable in fields, lawns, and gardens, but can be controlled by good cultural practices.

Originator(s) seed - Seed directly controlled by the originating or sponsoring person(s) or the person's designee.

Permittee - One who holds a permit issued by the department, authorizing the holder thereof to pay agricultural seed inspection fees under the reporting system.

Person - Any individual, partnership, corporation, association, trustee, receiver, governmental subdivision, or public or private organization of any character.

Pure seed - Shall include all seeds of each kind, or each kind and variety under consideration present in excess of 5% of the whole.

Pure live seed (PLS) - The percentage of pure seeds in a seed lot that have the ability to germinate. The percentage of PLS is determined by multiplying percent germination (including dormant seed) by percent pure seed and dividing by 100.

Ultimate consumer - A person who purchases seed with no intention to resell the seed.

Variety - A subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Classification of Licenses

4 TAC §9.2, §9.3

The new sections are proposed under the Texas Agriculture Code, §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement of Chapter 61 and to establish standards of genetic purity and identity; the Code, §61.011, which provides the department with the authority to charge fees for issuance of an agricultural seed inspection permit and Texas tested seed

label; and, the Code, §61.013, which provides the department with the authority to charge a fee for a vegetable seed license.

The Texas Agriculture Code, Chapter 61 is affected by the proposal.

§9.2. Agricultural Seed.

(a) In addition to the requirements of the Act, §61.011, concerning agricultural seed inspection fee and permit, any person who sells, offers, exposes, or otherwise distributes for sale agricultural seed within this state for planting purposes shall pay an inspection fee thereon by purchasing Texas Tested Seed Labels or by the Reporting System Permit. A person may not use both the Texas Tested Seed Label and the Reporting System Permit during the same quarter except when changing from the Texas Tested Seed Label to the Reporting System Permit, in which case the person's previously purchased supply of Texas Tested Seed Labels may be exhausted. Invoices must reflect if the inspection fee was paid by means of Texas Tested Seed Labels. Any change from the Reporting System Permit to the Texas Tested Seed Label or vice versa must begin on the first day of a quarter (September 1, December 1, March 1, or June 1). A person changing from the Reporting System Permit to the Texas Tested Seed Label may order such labels prior to the beginning of the quarter, provided the department is advised in writing of the person's intentions.

(b) Texas Tested Seed Label. When an inspection fee is paid by means of a Texas Tested Seed Label, the person who distributes, sells, offers for sale, or exposes for sale agricultural seed shall:

(1) purchase the Texas Tested Seed Labels from the department at a cost of $.03 for each 100-pound container of seed or fraction thereof; and

(2) attach such label printed with all of the analysis information required under the Act, § 61.004, concerning labeling of agricultural seed, to each container of seed sold, offered for sale, or otherwise distributed for sale for planting purposes within this state; unless the seed is sold in bulk, in which case the person selling, offering, exposing, or otherwise distributing the seed for sale shall furnish the purchaser one Texas Tested Seed Label for each 100 pounds of seed or fraction thereof.

(c) Reporting system. When an inspection fee is paid by means of the reporting system, the following shall apply:

(1) A person desiring to pay inspection fees under the reporting system shall first make application to the department on an "Application for Permit to Pay Inspection Fee by the Reporting System" form prescribed by the department.

(2) Upon approval, the department shall issue a "Permit to Pay Inspection Fee by Reporting System" and issue the permittee a permit number. Said permit shall remain in force and effect until the permittee requests its cancellation in writing, or until canceled, suspended, or modified by the department.

(3) The permittee shall pay an inspection fee of $.06 for each 100 pounds of agricultural seed sold or otherwise distributed for sale for planting purposes within the state.

(4) Records must be kept by the permittee showing the total pounds of each lot identified as to the kind and variety (when applicable). In addition, for auditing purposes, records must be kept by the permittee showing the invoice number for each distribution of seed, identified with the name of the kind and variety (when applicable), the lot number, pounds of seed, and number of containers of seed, and the person to whom the seed was distributed.

(5) Each permittee on the reporting system must file with the department a "Quarterly Report of Agricultural Seed Sales" on a form prescribed by the department. If a permittee has no sales during the quarterly reporting period, the department must be notified accordingly.

(6) Inspection fee(s) can be waived on subsequent sale(s) of returned seed which occur during the same germination period, if in the auditor's opinion invoices adequately reflect that an inspection fee has already been paid.

(7) When an inspection fee is paid by a person other than the person required to be named on the label of the agricultural seed, the permit number must be shown on the label.

(8) The penalty for a late filing of quarterly reports shall be $25 or 10% of the amount of the fee due, whichever is greater.

§9.3. Vegetable Seed.

(a) A person may not sell, offer, expose, or otherwise distribute for sale vegetable seed for planting purposes in this state unless such person first obtains a Vegetable Seed License from the department.

(b) A person desiring a Vegetable Seed License shall submit to the department an "Application for Vegetable Seed License" form prescribed by the department accompanied by a license fee in the amount of $100.

(c) A Vegetable Seed License must be obtained by each firm whose name and address appears on the label of the seed.

(d) Upon approval of an application for vegetable seed license and the receipt of the $100 license fee, the department shall issue a Vegetable Seed License to the applicant.

(e) A Vegetable Seed License issued under this section shall remain in force and effect until:

(1) August 31 following the date of issuance;

(2) canceled upon written request of the licensee; or

(3) canceled, suspended, or modified by the department.

(f) A Vegetable Seed License issued under this section may be renewed by a licensee if the licensee applies for such renewal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Seed Testing

4 TAC §9.4, §9.5

The new sections are proposed under the Texas Agriculture Code (the Code), §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the efficient enforcement of Chapter 61 and to establish standards of genetic purity and identity; and the Code, § 61.009, which provides the department with the authority to charge fees for testing of seed for purity and germination.

The Texas Agriculture Code, Chapter 61, is affected by the proposal.

§9.4. Procedures and Tolerances.

The Texas Department of Agriculture hereby adopts by reference Rules for Testing Seeds of the Association of Official Seed Analysts, as to procedures, methods, and tolerances for seed testing, except that in enforcement, no tolerance will be allowed for balloonvine, serrated tussock, or itchgrass. A tolerance of one will be allowed for cocklebur. The tolerance allowed for pure live seed will be the same as for germination. A laboratory test used for labeling purposes must be made by the Texas Department of Agriculture, the official state seed laboratory of another state, or a Registered Seed Technologist/Society of Commercial Seed Technologist member laboratory. Information relative to obtaining copies of the material adopted by reference may be obtained by writing the Texas Department of Agriculture, Seed Quality Program, P. O. Box 629, Giddings, Texas 78942. A copy is also available for public inspection at the Texas Department of Agriculture, Seed Quality Program, W.H. (Bill) Pieratt Building, Giddings, Texas.

§9.5. Service Testing Fees.

(a) The following schedule of tests and charges therefore shall be applicable to all service testing of agricultural seed, vegetable seed, and flower seed conducted by the department:

(1) standard germination test only: $7.50 each;

(2) standard purity test only: $7.50 each;

(3) mixtures or seed containing high inert matter: $9.50 each;

(4) complete test (purity and germination): $15 each;

(5) complete test for mixtures or seed containing high inert matter: $17.00 each;

(6) standard germination test on grasses: $12.50 each;

(7) standard purity test on grasses: $12.50 each;

(8) complete test on grasses: $25 each;

(9) noxious weed examination only: $4.00 each;

(10) vigor test: $9.50 each;

(11) tetrazolium or phenol test: $11 each;

(12) examination- 10-pound rice seed sample for presence of red rice: $11 each

(13) moisture test: $6.00 each;

(14) fescue endophyte test: $25 each;

(15) fluoresence test: $4.00 each;

(16) flower: $25 each; and

(17) grasses and flower mixed: $50 each

(b) The following information must be given on all service samples of seed submitted to the department for testing:

(1) the name and address of the sender;

(2) kind and variety, if known;

(3) lot number or other stock identification;

(4) test(s) desired; and

(5) the name of any seed treatment substance to which the seed has been subjected.

(c) The department shall have the right to reject dirty or unclean seed samples.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Labeling Provisions

4 TAC §9.6, §9.7

The new sections are proposed under the Texas Agriculture Code,§61.002, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the efficient enforcement of Chapter 61 and to establish standards of genetic purity.

The Texas Agriculture Code, Chapter 61, is affected by the proposal.

§9.6. Agricultural Seed.

(a) All seed must be labeled according to these provisions unless clearly labeled "not for sale for sowing purposes" or some similar statement of same meaning.

(b) Kinds of agricultural seed generally labeled as to variety.

(1) When any of the following kinds of agricultural seed is present in excess of 5% of the whole, it must be labeled to show the variety name or the words "variety not stated": alfalfa millet, foxtail bahiagrass millet, pearl barley oats bean, field pea, field beet, field peanut brome, smooth rice broomcorn rye clover, crimson safflower clover, red sorghum clover, white sorghum-sudangrass corn, field soybean corn, pop sudangrass cotton sunflower cowpea tobacco crambe trefoil, birdsfoot fescue, tall triticale flax wheat lespedeza, striate

(2) If the name of a variety is given, the name may be associated with the name of the kind with or without the words "kind and variety."

(3) The percentage of pure seed shown in such a case shall apply only to the variety except for labeling of hybrids as provided for in § 9.8 of this title (relating to Hybrid Agricultural Seed).

(4) If separate percentages for the kind(s), variety(s), or hybrid(s) are shown, the name of the kind and the name of the variety or the term "hybrid," or the term "variety not stated" shall be clearly associated with the respective percentages.

(c) Kinds of agricultural seed generally sold on a pure live seed basis. The following kinds of agricultural seed may be labeled as to the percentage of pure live seed in lieu of the percentages of pure seed, inert matter, and germination: bermudagrass kleingrass bermudagrass, giant laurisagrass bluestem: lovegrass: Angleton basuto big Lehmann caucasian sand Kleberg sandhill little weeping old world Wilman sand mesquite: silky curly silver vine yellow muhly, spike bristlegrass, plains needlegrass, green buffalograss panicgrass: buffelgrass blue dallisgrass green dropseed: rhodesgrass giant ricegrass, Indian mesa sacaton, alkali sand saltbush, fourwing galetta grass sprangletop, green grama: switchgrass black wheatgrass: blue beardless hairy crested side-oats intermediate guineagrass pubescent hardinggrass Siberian indiangrass, yellow western Johnsongrass winterfat

(d) Agricultural seed may be labeled as to an expiration date in lieu of the actual date of test. If this procedure for labeling is used, the words "Texas expiration date," "expiration date," "exp. date," or "TX exp. date" must precede the month and year. Unless otherwise specified, the expiration date will be the last day of month designated.

§9.7. Vegetable Seed.

(a) Vegetable seed in containers weighing less than one pound may be labeled as to the year for which the seed was packaged for sale in lieu of the actual date of test. If this procedure for labeling is used, the words "packed for" must precede the year. The year packed for will cover a period of time beginning August 1 of the current year through September 30 of the following year. No seed showing packed for the next year shall be offered for sale to the ultimate consumer:

(1) before August 1 of present year or after September 30 of the next year;

(2) for a period of time exceeding twelve consecutive months during the year for which it was packed.

(b) For vegetable seed packed in containers weighing less than one pound, the nine-month limitation of date of test, concerning germination and purity testing, is extended to twelve months, exclusive of the calendar month in which the test was completed.

(c) The standards for germination of vegetable seed are as follows: artichoke: 60 endive: 70 asparagus: 70 kale: 75 asparagusbean: 75 kale, Chinese: 75 bean, garden: 70 kale, Siberian: 75 bean, lima: 70 kohlrabi: 75 bean, runner: 75 leek: 60 beet: 65 lettuce: 80 broadbean: 75 melon: 75 broccoli: 75 mustard, India: 75 brussels sprouts: 70 mustard, spinach: 75 burdock, great: 60 okra: 50 cabbage: 75 onion: 70 cabbage, tronchuda: 75 onion, Welsh: 70 cabbage, Chinese: 75 pak-choi: 75 cardoon: 60 parsley: 60 carrot: 55 parnsip: 60 cauliflower: 75 pea: 80 celeriac: 55 pepper: 55 celery: 55 pumpkin: 75 chard, Swiss: 65 radish: 75 chicory: 65 rhubarb: 60 chives: 50 rutabaga: 75 citron: 65 salsify: 75 collards: 80 savory summer: 55 corn, sweet: 75 sorrel: 65 cornsalad: 70 soybean: 75 cowpea: 75 spinach: 60 cress, garden: 75 spinach, New Zealand: 40 cress, upland: 60 squash: 75 cress, water: 40 tomato: 75 cucumber: 80 tomato, husk: 50 dandelion: 60 turnip: 80 dill: 60 watermelon: 70 eggplant: 60

(d) Vegetable seed may be labeled with an expiration date in lieu of the actual date of test or year for which the seed was packaged. If an expiration date is used, the words "Texas expiration date," "expiration date," "exp. date," or "TX exp. date" must precede the month and year. Unless otherwise specified, the expiration date will be the last day of the month designated.

(e) If vegetable seed is sold or offered for sale from jars, cans, bins, or other bulk containers to which the purchaser has access before buying, the seller shall attach to the container a label bearing all required information including the name and address of the seller.

(f) Containers of seed prepackaged by the seller must be labeled in accordance with requirements applying to the specific kind(s) of seed in said prepackaged container.

(g) It shall be permissible for the seller to adopt and use the analysis furnished by the original seller; however, responsibility for any alleged deficiencies in the quality of seed made subsequent to such a sale, shall be with the seller.

(h) The requirement for a Vegetable Seed License is waived for the seller if the original container bears labeling information adequately reflecting that this requirement has been met.

(i) The germination test period for seed sold from an opened hermetically-sealed container cannot exceed nine months from the date the container was opened. The date on which the container was opened must be designated on the container. (See § 9.11 of this title (relating to Hermetically-Sealed Containers).)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Sampling Procedures

4 TAC §9.12, §9.13

The new sections are proposed under the Texas Agriculture Code, §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the efficient enforcement of Chapter 61 and to establish standards of genetic purity and identity.

The Texas Agriculture Code, Chapter 61 is affected by the proposal.

§9.12. Seed Sampling Procedures.

(a) General procedure.

(1) In order to secure a representative sample, equal portions shall be taken from evenly distributed parts of the quantity of seed or screenings to be sampled. Access shall be had to all parts of that quantity. When more than one trierful of seed is drawn from a bag, different paths shall be followed. When more than one handful

is taken from a bag, the handfuls shall be taken from well-separated points.

(2) For free-flowing seed in bags or bulk, a probe or trier shall be used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag should be used.

(3) Nonfree-flowing seed, such as certain grass seed, uncleaned seed, or screenings, difficult to sample with a probe or trier, shall be sampled by thrusting the hand into the bulk and withdrawing representative portions. The hand is inserted in an open position and the fingers are held closely together while the hand is being inserted and the portion withdrawn.

(4) As the seed or screenings are sampled, each portion shall be examined. If there appears to be lack of uniformity, the portions shall not be combined into a composite sample but shall be retained as separate samples or combined to form individual container samples to determine such lack of uniformity as may exist.

(5) When the portions appear to be uniform, they shall be combined to form a composite sample.

(b) Bulk. Bulk seeds or screenings shall be sampled by inserting a long probe or thrusting the hand into the bulk as circumstances require in at least seven uniformly distributed parts of the quantity being sampled. At least as many trierfuls or handfuls shall be taken as the minimum which would be required for the same quantity of seed or screenings in bags of a size customarily used for such seed or screenings.

(c) Bags.

(1) For lots of six bags or less, each bag shall be sampled. A total of at least five trierfuls shall be taken.

(2) For lots of more than six bags, five bags plus at least 10% of the number of bags in the lot shall be sampled. (Round off numbers with decimals to the nearest whole number, raising 0.5 to the next whole number.) Regardless of the lot size, it is not necessary that more than 30 bags be sampled.

(3) Samples shall be drawn from unopened bags except under circumstances where the identity of the seed has been preserved.

(d) Small containers. In sampling seed in small containers which it is not practical to sample as required above, entire unopened containers may be taken in sufficient number to supply a minimum size sample as required below. The sample may consist of the contents of one container, or two or more containers when combined.

(e) Size of sample. The following are minimum sizes of samples of agricultural seed, vegetable seed, and screenings to be submitted for analysis, test or examination:

(1) two ounces of grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these;

(2) five ounces of red or crimson clover, alfalfa, lespedeza, ryegrass, bromegrass, millet, flax, rape, or seeds of similar size;

(3) one pound of sudangrass, proso, hemp, or seeds of similar size;

(4) two pounds of cereals, vetch, sorghums, or seeds of similar or larger size;

(5) two quarts of screenings.

§9.13. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Chapter 10. Citrus

4 TAC §§10.1-10.6

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes repeal of §§ 10.1-10.6 concerning citrus maturity standards. These sections are being repealed to allow the department to relocate these sections from Chapter 10 to Chapter 21 as part of the reorganization of its regulatory rules. The repeal is further proposed to clarify existing language in the current regulations and to eliminate duplicate language.

Brent Wiseman, coordinator for crop certification and citrus quality programs, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Wiseman also has determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be an assurance that the citrus fruits meet quality standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Brent Wiseman, Coordinator for Crop Certification and Citrus Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §94.003, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary to establish citrus quality standards.

The code sections which will be affected by the proposals are the Texas Agriculture Code, Chapter 94.

§10.1. Maturity Standards for Grapefruit.

§10.2. Maturity Standards for Oranges.

§10.3. Determination of Soluble Solids.

§10.4. Determination of Anhydrous Citric Acid.

§10.5. Seasonal Requirements of Grapefruit and Oranges for Fitness for Human Consumption.

§10.6. Standards for Use of Coloring Matter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Texas Department of Agriculture
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Chapter 10. Seed Certification Standards

The State Seed and Plant Board (the board) and the Texas Department of Agriculture propose new §§10.1-10.31, concerning the administration of the Texas Seed and Plant Certification Act. These sections are being relocated from Chapter 21 of this title as part of the department's reorganization of it's regulatory rules. The purpose of the new sections is to create and make available a source of seeds and plant material so grown and distributed as to insure genetic purity and identity. Certified seed must meet reasonable standards of genetic purity as established by the State Seed and Plant Board. The Texas Department of Agriculture (the department) is the certifying agency. The Commissioner of Agriculture is charged with duties of administering rules and regulations relative to the enforcement of the Act, the appointment of inspectors, collection of fees, issuance of labels and the actual enforcement of the law and regulations promulgated by the board.

Charles Leamons, director for seed quality for the department, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. All fees imposed under these sections will remain at their current levels.

Mr. Leamons also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify and eliminate the burden of compliance to antiquated rules and to recover costs for administrating and enforcing the rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Charles Leamons, Director for Seed Quality, Secretary, State Seed and Plant Board at the Texas Department of Agriculture, P. O. Box 629, Giddings, Texas 78942. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

General Requirements

4 TAC §10.1-10.11

The new sections are proposed under the Texas Agriculture Code (the Code), §§62.004 and 62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; the Code, §12.016, which provides the department with the authority to adopt rules for administration of the code; the Code, §§62.005, which provides the department with the authority to charge a fee for the licensing of seed producers; and, the Code §62.008, which provides the department with the authority to fix and collect a fee for the certification of seed or seed plants.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Controlling the pollination - A method of hybridization which will produce pure seed which is at least 75% hybrid seed.

Field - A parcel of land clearly defined by distinct boundary lines.

Hybrid seed - The first generation seed of a cross produced by controlling the pollination and by combining two or more inbred lines, one inbred or a single cross with an open pollinated variety, or two selected clones, seed lines, varieties, or species.

Kind - One or more related species or subspecies which singly or collectively is known by one common name (example: corn, oat, alfalfa, and timothy).

Off-type - A plant or seed which deviates in one or more characteristics from that which has been described in accordance with § 10.2(b) of this title (relating to Eligibility of Varieties).

Open-pollinated seed - Seed produced as a result of natural pollination, as opposed to hybrid seed produced as a result of controlled pollination.

Seed Quality Program - A division of the Texas Department of Agriculture responsible for administering certification standards.

Select seed - A class of tree seed which shall be the progeny of rigidly selected trees or stands of untested parentage that have promise but not proof of genetic superiority, and further, for which geographic source and elevation shall be stated on the certification label.

Source-identified - A class of tree seed defined as seed from:

(A) natural stands with known geographic source and elevation; or

(B) a plantation of known geographic locations, as specified in the standards of the certifying agency.

Variant - Any seed or plant which:

(A) is distinct within the variety but occurs naturally in the variety;

(B) is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted;

(C) was originally a part of the variety as released; and

(D) is described as being part of the variety by the breeder (a variant is not an off-type).

Variety (cultivar) - A subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind.

§10.2. Eligibility of Varieties.

(a) Interagency certification as allowed by the Federal Seed Act.

(1) Interagency certification of a variety by Texas shall not be construed as meaning the variety is necessarily approved for certification under the Texas requirements.

(2) A $75 fee will be assessed and must be paid for each lot of seed on which interagency certification is requested.

(3) Seed to be recognized for interagency certification must be received in containers carrying official certification labels, or if shipped for conditioning, evidence of its eligibility from another official certifying agency, together with the following information (forms are available from the Seed Quality Program for this purpose):

(A) variety;

(B) quantity of seed;

(C) class of certified seed; and

(D) inspection or lot number traceable to the previous certifying agency's records.

(4) Each label used in interagency certification shall be serially numbered, or carry the certification identity number, and clearly identify the certifying agencies involved, and the variety, kind and class of certified seed.

(b) The State Seed and Plant Board reserves full power and authority to determine the eligibility of a variety for certification.

(c) The following must be made available to the board by the originator, developer, owner, or agent when certification is requested:

(1) name of kind and variety;

(2) a statement concerning the variety's origin and the breeding procedure used in its development including:

(A) genealogy, including public and private varieties, lines, or clones used, and the breeding method;

(B) details of subsequent stages of selection and multiplication;

(C) type and frequency of variants during reproduction and multiplication. State how these variants may be identified; and

(D) evidence on stability.

(3) a detailed description of the morphological, physiological, and other characteristics of the plant and seed that distinguish it from other varieties. This must include the following:

(A) special characteristics of the seed and of the plant as it passes through the seedling stage, flowering stage and fruiting stage. Description of the mature plant and comparison with similar commercially available varieties grown under the same conditions; and

(B) a completed objective form for the crop as provided by the Seed Quality Program, if such form is available. The completed objective description form as provided by the U.S. Plant Variety Protection Office, if such form is available for the crop, may be used in lieu of the Texas form;

(4) evidence of performance of the variety (date, graphs, charts, pictures, etc.) supporting the identity of the variety. If statements or claims are made concerning performance characteristics, such as yield, tolerance to insects or diseases, or lodging, there must be evidence to support such statements. Statistical analysis of data is encouraged;

(5) a statement delineating the geographic area or areas of adaptation of the variety;

(6) a statement on the plans and procedures of the maintenance of stock seed classes including the number of generations through which the variety may be multiplied;

(7) a description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;

(8) any additional restrictions on the variety, specified by the breeder with respect to geographic area of seed production, age of stand, or other factors affecting genetic purity; and

(9) a sample of seed representative of the variety as marketed. The size shall be at least the size required in the specific commodity standard for laboratory analysis. For vegetative material, the sample size shall be set by the certifying agency at the time of certification request.

§10.3. Approval of Applicant under Certification.

(a) An applicant for licensing as a "Registered Plant Breeder" or a "Certified Seed Grower" as provided in the Act, shall be a person, firm, or corporation of good character and have a reputation for honesty, competency and fair dealing. All applicants for a Registered Plant Breeder license shall pay a fee of $100 at the time of application.

(b) All applicants for licensing shall furnish such information as the board may require and shall appear in person before said board if so requested.

(c) When an applicant has satisfied the State Seed and Plant Board as to qualifications and ability to produce certified seed and all other requirements for certification have been met, the State Seed and Plant Board shall issue a certificate evidencing the fact that the applicant is fully licensed as a registered plant breeder or certified seed grower. § 10.4. Limitations of Generations. The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner of a variety, but shall not exceed two generations beyond foundation seed, with the following exceptions:

(1) Unlimited recertification of the certified class may be permitted for older crop varieties where foundation seed is not being maintained.

(2) The production of an additional generation of the certified class only may be permitted on a one year basis when an emergency is declared prior to the planting season by the State Seed and Plant Board stating that foundation and registered seed supplied are not adequate to plant the needed certified acreage of the variety. The permission of the originating or sponsoring plant breeder, institution, firm, or owner of the variety, if existent, must be obtained. The additional generation of certified seed to meet the emergency need is ineligible for recertification.

§10.5. Application for Field Inspection.

(a) Applications must be made on official forms obtained from the Seed Quality Program. The application fee must be submitted along with specific acreage inspection fees. The acreage inspection fee will be refunded if the application is canceled in time to save an inspector making a trip to the field.

(b) A late fee of $20 will be assessed and must be paid for each field on which certification is requested after the deadline date established for each specific crop. Applications will not be accepted if it can be determined by the certifying agency that the crop is too far advanced in development to allow satisfactory inspection.

(c) Applicants must furnish, with the application, a certification label, analysis label, and a copy of the stock purchase invoice from the seller showing the kind and variety, certification class, quantity, and the date of transaction for each lot of seed to be increased. Provided, however, a copy of the stock purchase invoice need not be furnished with the application when eligible production for certification increase is planted back by the producer. The applicant must also submit a map with scale of at least one inch = two miles, showing exact location of each field for which inspection is requested. Each field must be identified by a field identification number on a sign or stake at a point of common entry.

(d) Unless otherwise specified when two or more seed crops are produced during the year from the same stand, a separate application and field inspection fee must be filed for each crop, and each crop must be inspected in accordance with the specific crop standards. When application is made for inspection of other than the first crop, it should be so identified on the application form, i.e., "second crop, third crop."

(e) The applicant may request reinspection of a rejected field provided the cause for rejection can be corrected and provided he/she again submits an inspection fee for the acreage involved, thereby bringing the total inspection fee to twice that stated in the commodity standards. In no case will the reinspection fee be less than $20. Request for reinspection of a rejected field will not be accepted if it can be determined that the inspector will not be able to visit the field in sufficient time before harvest to make a satisfactory inspection.

§10.6. Handling of Crop Prior to Inspection.

(a) Care must be exercised in planting to avoid mixing of the variety in the seeding equipment and in the transporting vehicle. The applicant must see that these machines are thoroughly cleaned in order to safeguard the purity of the seed. Identity of the seed must be maintained at all times.

(b) Every field for which certification is requested shall show evidence of good management and shall show that reasonable precaution has been taken to control contamination by other varieties. Constant roguing must be practiced throughout the season. The right is reserved to reject a field on general certification principles when weeds, diseases, or lack of good management make accurate inspection difficult or impossible.

§10.7. Field Inspection.

(a) The applicant shall notify the department's Regional Office in the area in which the field is located, two weeks prior to the time of the first required inspection.

(b) One or more field inspections shall be made by an approved inspector of the department when genetic purity and identity, or any other factor affecting certification, can best be determined. The tolerances for the field standards shall be based on plants and not heads unless otherwise specified.

(c) Unless otherwise specified and if, in the opinion of the inspector, such action is justified, a portion of a field may be certified provided the portion not certified or that is rejected is destroyed or removed before pollen shed has an opportunity to produce contamination. If pollen contamination is not a factor, the portion not certified or that is rejected may be destroyed or removed either before or after harvest of the eligible portion in a manner to prevent admixing. The portion not certified or that is rejected shall be clearly defined by stakes, flags, etc. at the time the decision is made.

§10.8. Harvesting, Processing, and Storing.

(a) Care must be exercised in harvesting to avoid admixing of the variety in harvesting equipment and in the transporting vehicle. The applicant must see that this equipment is thoroughly cleaned in order to safeguard the purity of the seed. Identity of the seed must be maintained at all times. Certified seed must be conditioned by a conditioning plant that has been approved by the department.

(b) Any person, firm, or corporation desiring to become an approved certified seed handler shall make application to the Seed Quality Program for inspection and approval of the seed conditioning facilities. Application for approval must be made each calendar year. Inspection of the facilities by an approved inspector of the certifying agency shall be made in determining approval or rejection. Forms supplied by the Seed Quality Program are required to be used. When a seed conditioning plant has been inspected and meets all requirements, a certificate of approval will be issued by the certifying agency. Thereafter, the facilities are subject to inspection at the discretion of the certifying agency.

(c) Facilities shall be capable of performing seed conditioning without introducing admixtures.

(d) When different classes of certified seed, or when certified seed and noncertified seed of the same variety or when two or more varieties of the same kind are handled, adequate precautions shall be taken so as to prevent contamination and to maintain the identity of each seed lot. All equipment used in seed conditioning must be thoroughly cleaned before any eligible seed is handled. Identity of seed must be maintained at all times.

(e) Records of all operations relating to certification shall be complete and adequate to account for all incoming seed and final disposition of seed. Seed conditioners shall permit inspection by the department of all records pertaining to certified seed.

(f) Seed conditioners shall designate an individual who shall be responsible to the Seed Quality Program for performing such duties as it may require.

(g) Prior to reconditioning seed bearing the certification labels, an approved inspector must supervise the removal of said labels which are to be surrendered to the inspector.

(h) Seed lots of the same variety and class may be blended and the class retained. If lots of different classes are blended, the lowest class shall be applied to the resultant blend. Such blending can only be done when authorized by the Seed Quality Program. The blend is a new lot which shall be sampled and tested in compliance with the commodity standards.

§10.9. Seed Testing.

(a) Unless a specialized laboratory is designated by the State Seed and Plant Board in agreement with the Seed Quality Program, to do the testing of a specific seed commodity, the laboratory test must be made by one of the department's seed laboratories, the official state seed laboratory of another state or a registered seed technologist in good standing with the Society of Commercial Seed Technologists. In addition to the sample submitted to a laboratory for analysis, a file sample shall be submitted to the Seed Quality Program, which may be used for determining other varieties and/or off type plants. Samples of seed lots submitted for certification must be drawn in the manner recommended by the Association of Official Seed Analysts, and at least the size shown in §10.14 of this title (relating to Minimum Amount of Seed Required for Laboratory Analysis). Each sample must be identified with the following information: name and address of applicant, kind and variety of seed, seed class eligibility, year of production, final lot number, and seed treatment substance.

(b) The rules for testing seed as adopted by the Association of Official Seed Analysts are hereby adopted as the procedure to be followed in the testing of seed subject to certification. However, when no rules for testing have been adopted by the Association of Official Seed Analysts, the procedure used must be mutually approved by the State Seed and Plant Board and the Seed Quality Program. The results of such tests shall be the basis for the enforcement of the provisions of this act for all classes of seed recognized.

(c) The State Seed and Plant Board has full authority to question the procedure used by laboratories or technologists for testing eligible seed. Failure to follow the correct testing procedure shall be cause for the board to consider all tests made by the laboratory and/or technologist as no longer being acceptable in meeting certification requirements.

(d) In order to allow the seedsmen to bag and label in one operation, the certification labels for seed from a field or from blended fields may be issued upon receipt of the inspector's completed report showing all seed involved to have passed the field production standards, even though the laboratory test has not been completed and in case of hybrid sorghum seed, sorghum line seed, hybrid sunflower seed, and sunflower line seed, the required varietal purity grow-out test has not been completed. In all cases, a copy of the laboratory test from each lot represented which is identifiable with the certification labels issued must be furnished the Seed Quality Program prior to distribution of the seed. However, the applicant must furnish the Seed Quality Program a copy of the laboratory test not later than July 31 of each year for the previous year's production unless an extension in writing is requested for a good and valid reason.

§10.10. Labels.

(a) Distribution of seed represented as being of a certified class before the commodity standards and general requirements have been met, shall be grounds for cancellation of the applicant's eligibility and shall be cause for recall of all certification labels issued to the applicant.

(b) Application forms for ordering certification labels are available from the Seed Quality Program.

(c) Unless otherwise specified, all classes of certified seed offered for sale must be sacked in new, clean, even weight containers. The certification label must be affixed to each container in such a way as to prevent easy removal and reattachment. The use of a minimum of two staples of heavy enough quality to cause the label to be torn or obviously mutilated when removed, is considered as one acceptable method of attachment.

(d) All classes of certified seed, when offered for sale, shall have an official certification label affixed to each container clearly identifying the certifying agency, the reference number, the variety name, and the kind and class of seed. All classes of certified seed offered for sale shall bear the proper certification label issued by the Seed Quality Program. Such labels shall bear the state seal. Unless the specific standard provides for an additional label color, the labels shall be printed as follows:

(1) foundation label on a background of white;

(2) registered label on a background of purple; or

(3) certified label on a background of blue.

(e) Reuse of any class of certified label shall be considered in direct conflict with the provisions of the law and regulations.

(f) All inspection fees and other fees due must be paid in full prior to the issuance of certification labels.

(g) Carryover seed shall bear the certification label of the year of production.

(h) It is the responsibility of the certified seed grower (applicant) for proper use of all certification labels.

(i) The cost of certification labels shall be:

(1) foundation, registered, and certified labels–$.08 each;

(2) Organization for Economic Cooperation and Development (OECD) certified labels–$.08 each;

(3) pressure sensitive labels–$.08 each;

(4) gum labels–$.08 each.

§10.11. Bulk Sales.

(a) Certified seed of the certified class only may be sold in bulk provided the identity of the seed is carefully maintained and the seed is handled in a manner which prevents a mixture. All requirements other than even weight bagging must be met prior to date of sale.

(b) Bulk sales are authorized as follows:

(1) A maximum of two sales with a maximum of one delivery; the delivery to be made by the certified seed grower or producer directly to the consumer.

(2) Seed sold in bulk is not eligible for further increase under the certification program.

(3) Bulk seed sold outside the state of Texas cannot be recognized or referred to as certified seed.

(4) Certification labels will be issued for seed intended for bulk sale with the net weight left blank. The seller must write in the net weight in ink at the time of sale.

(5) A certification label must be affixed to the shipping order or bill of lading and the sales invoices in such a way as to prevent easy removal and reattachment.

(6) When delivery is made, a check of the bin or receiving vehicle must be made to determine if it is clean. If it is not clean, this should be noted on the shipping order and on the invoice.

(c) The certified seed grower shall provide a copy of the shipping order or bill of lading to the consumer upon delivery and an invoice to the deliver purchaser. A copy of each shall be forwarded to the director, Seed Quality Program, within 30 days. The following information must be included on the invoice:

(1) kind and variety;

(2) field lot and/or contract grower;

(3) weight of seed;

(4) date of transaction;

(5) certified seed grower's name and address;

(6) buyer's name and address; and

(7) consumer or delivery point.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Field Inspection Chart

4 TAC §10.12

The new section is proposed under the Texas Agriculture Code (the Code), §§62.004 and 62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.12. Number and Time of Field Inspections.

The following chart designates the date of application and time of field inspection for various crop kinds, as required for seed certification.
FIGURE 1: 4 TAC §10.12.

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Acreage Inspection Fees For Certification

4 TAC §10.13

The new section is proposed under the Texas Agriculture Code (the Code), §§62.004 and 62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification of seed; and, the Code, § 62.008 which provides the Texas Department of Agriculture with the authority to fix and collect a fee for the certification of seed or seed plants.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.13. Inspection Fees for Certification.

The following chart designates fees per acre for various crop kinds as required for seed certification.
FIGURE: 4 TAC §10.13.

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Laboratory Analysis Chart

4 TAC §10.14

The new section is proposed under the Texas Agriculture Code (the Code), §§62.004 and 62.005, which provide the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for seed certification; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.14. Minimum Amount of Seed Required for Laboratory Analysis.

The following chart details the minimum amount of seed required for laboratory analysis.

FIGURE 1: 4 TAC §10.14.

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Genetic Seed Chart

4 TAC §10.15

The new section is proposed under the Texas Agriculture Code (the Code), §§62.004 and 62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.15. Genetic Seed Certification Standards.

The Genetic Seed Certification Chart and footnotes, are adopted by reference by the State Seed and Plant Board for the purpose of seed certification for genetic identity only. Copies may be obtained from the Texas Department of Agriculture, Seed Quality Program, P.O. Box 629, Giddings, Texas 78942.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Additional Requirements for the Certification of Certain Crops

4 TAC §§10.16-10.22

The new sections are proposed under the Texas Agriculture Code (the Code), §§62.004 and 62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification of seed and adopt rules for the production and handling of certified seed and plants by licensed producers; the Code, §12.016, which provides the Texas Department of Agiculture with the authority to adopt rules for administration of the Code; and, the Code, §62.008, which provides the department with the authority to fix and collect a fee for the certification of seed or seed plants.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.16. Length of Stand Requirements.

(a) Alfalfa.

(1) The region of adaptation for seed production of a given variety shall be that recommended by the originating plant breeder. This shall meet the requirements of the National Certified Alfalfa Variety Review Board. When a variety is grown within its designated region of adaptation, certification is limited to a maximum of three generations from breeders seed. The three generations are foundation, registered, certified, i.e., breeder seed to foundation seed; foundation seed to registered seed; registered seed to certified seed.

(2) When a variety is grown outside its designated region of adaptation, certification is limited to one generation from foundation or registered seed, i.e., foundation to certified or registered to certified.

(3) The certified class is limited to seed crops produced from the same stand, not to exceed a six-year period, beginning with the year in which the crop is first seeded. Application must be made each year whether seed production is intended or not, if certification is desired in a later year.

(b) Arrowleaf clover. Seed produced from a new field stand acceptable for the foundation class is eligible for foundation labels. Seed produced from a new field stand planted with foundation seed is eligible for registered labels. Seed from the first volunteer stand will also be eligible for the registered class. The second year volunteer stand and subsequent volunteer stands will be eligible for the certified class. Seed produced from new field stands planted with foundation or registered seed is eligible for certified labels. The second year volunteer stand and subsequent volunteer stands will be eligible for the certified class.

(c) Grasses. Bluestems: (Big, Caucasian, Little, Sand, Turkestan, and Yellow); Kleingrass; Gramas: (Blue and Sideoats); Buffelgrass; Hardinggrass; Yellow Indiangrass; Lovegrass; Switchgrass; Alkali Sacaton; Laurisagrass; Bahiagrass; Guineagrass.

(1) Production of foundation seed is limited to three consecutive years from planting of breeder seed.

(2) Production of registered seed is limited to:

(A) four consecutive years from planting of foundation seed; and

(B) one year from foundation seed production stand immediately following the calendar year of foundation seed production.

(3) Production of the certified class of seed is limited to:

(A) five consecutive years from planting of foundation seed or registered seed; and

(B) two consecutive years from a foundation seed production stand or one year from a registered seed production stand immediately following the calendar year of the foundation or registered seed production.

(4) All seed crops harvested within a calendar year from the same stand are eligible for the same certification class as the first harvest of the calendar year.

(5) Application for inspection must be made each year whether certified production is intended or not if certification is desired in a later year.

(d) Rhodesgrass.

(1) Production of foundation seed is limited to one calendar year.

(2) Production of the certified class is limited to two consecutive years from foundation seed or two consecutive calendar years from a foundation seed production stand immediately following the calendar year of the foundation seed production.

(3) When a fall planting does not produce a mature seed crop during the same calendar year of planting, then the first calendar year of seed certification shall be considered the year immediately following the fall planting.

(4) All seed crops harvested within a calendar year from the same stand are eligible for the same certification class as the first harvest of the calendar year.

(5) Application for inspection must be made each year whether certified seed production is intended or not if certification is desired in a later year.

(e) Sorghum. When perennial types, such as perennial sorgrass, are being produced, only one year of registered seed may be produced from a field planted with foundation seed. Only one year of certified seed may be produced from a field planted with registered seed.

§10.17. Restrictions on Number of Varieties Per Farm.

(a) Arrowleaf clover. Only one variety of arrowleaf clover may be grown on a farm for seed production. A farm is any size body of land operated by one farmer which is not adjacent to any other body of land operated by the same farmer. When adjacent bodies of land are rented or leased by the same farmer from different owners, each body of land shall be considered a separate farm.

(b) Cotton. Production must be on a one-variety farm when specified by the originating breeder and/or institution. A farm is any size body of land operated by one farmer which is not adjacent to any other body of land operated by the same farmer. When adjacent bodies of land are rented or leased by the same farmer from different owners, each body of land shall be considered a separate farm.

§10.18. Definition of Terms and Other Requirements.

(a) Corn.

(1) Hybrid corn is seed to be planted for any use except seed. It may be any one of the following:

(A) a single cross, i.e., a first generation of cross between two inbred lines;

(B) a double cross, i.e., the first generation of a cross between two single crosses;

(C) a three way cross, i.e., the first generation of a cross between a single cross and an inbred line; or

(D) a top cross, i.e., the first generation of a cross between an inbred line and an open pollinated variety, or the first generation of a cross between a single cross and an open pollinated variety.

(2) To be eligible for certification, a foundation single cross used to produce double, three-way, or top crosses, must be produced from approved inbred lines whose source assures their identity.

(3) Inbred lines.

(A) For an inbred line, to be eligible for certification, it must be from an identifiable source and it must be approved by the certifying agency.

(B) An inbred line used as a pollinator in a foundation single cross isolation may be certified, provided all the seed parents in the isolated field are inspected for certification and meet all field requirements for certification.

(C) The following classes of seed are recognized.

(i) Only the class "certified" is recognized in hybrid corn.

(ii) Hybrid corn must be produced from foundation seed that has been field inspected.

(iii) A foundation single cross shall consist of the first generation hybrid between two inbred lines to be used in the production of double, three-way or top crosses. A fertility restoring line may be substituted for its nonrestoring counterpart.

(iv) An inbred line must be relatively true- breeding strain of corn resulting from at least five successive generations of controlled self-fertilization or a back crossing to a recurrent parent with selection or its equivalent.

(D) When a specific genetic factor(s) is added to an inbred line, the line must have been back-crossed to its recurrent parent at least five generations. The line must be homozygous for the specific genetic factor(s) except for the pollen restoration factor(s).

(E) For a recovered pollen restorer inbred line, selection must be relative to a specific cytoplasmic male sterile source.

(F) Proof of the genetic nature of a recovered line will be supplied by the originator.

(b) Sorghum.

(1) Male sterile seed stock.

(A) A male sterile seed stock is one to be planted for use as a seed parent in the production of hybrid sorghum seed.

(B) The pollinator for the production of a male sterile seed stock must originate from seed stocks which are designated specifically for the use as a pollinator of the male sterile seed stock and must not be more than two generations removed from stocks in which plants were individually checked for their ability to maintain high sterility.

(C) Male sterile seed stock must represent a parent of a specific combination that has been approved by the State Seed and Plant Board.

(D) The name under which any male-sterile seed stock shall be certified shall be the same as the designation given by the originator or originating agency.

(E) The entire acreage in an isolated seed production plot or in a given seed production field must be eligible and must be inspected.

(2) Pollinator lines (B & R).

(A) A pollinator line is one to be planted for use as a pollen parent in the production of male sterile seed stocks or hybrid sorghum seed.

(B) B Lines are defined as maintainer pollinator lines for use in the production of male sterile seed stocks.

(C) R Lines are defined as restorer pollinator lines used in the production of commercial hybrids.

(D) A pollinator line, to be eligible for certification, must be from a source such that its identity may be assured. A pollinator line must represent a parent of a specific combination that has been approved by the State Seed and Plant Board.

(E) The name under which any pollinator line shall be certified shall be the same as the designation given by the originator or the originating agency.

(F) The parental stock for the production of a pollinator line must originate from seed stocks which are designated specifically for use as a pollinator.

(G) The entire acreage in an isolated seed production plot or in a given seed production field must be eligible and must be inspected.

(3) Hybrid (commercial).

(A) A certified hybrid sorghum (commercial) is one to be planted for any use except seed.

(B) Hybrid sorghum (commercial) planting seed, to be certified, must be produced from foundation seed stocks approved by the State Seed and Plant Board, meeting the requirements of the specific standards for male sterile seed stock and the specific standards for pollinator lines (B & R) except for hybrid sorghum (commercial), approved by the State Seed and Plant Board as a "closed pedigree," in which case the male sterile and pollinator line (B & R) will be inspected on the basis of a complete breeder plant description using the tolerances set forth in this standard at the time the hybrid sorghum (commercial) seed is being produced.

(C) The name under which any hybrid sorghum (commercial) is certified, shall be the same as the designation given by the originator or the originating agency and must represent a specific combination that has been approved by the State Seed and Plant Board.

(D) The pollinator for the production of a hybrid sorghum (commercial) must originate from seed stock which is designated specifically for use as a pollinator of the hybrid.

(E) The entire acreage in an isolated seed production field must be eligible and must be inspected.

(c) Hybrid sunflower.

(1) The class "foundation" shall be recognized for the female seed parent and male pollinating parent used for the production of commercial hybrids.

(2) A commercial hybrid is one to be planted for any use except seed production. Only the class "certified" is recognized in hybrid sunflower.

(3) A commercial hybrid to be certified must be produced from foundation seed stock approved by the certifying agency.

(4) A female seed parent and male pollinating parent is one to be planted for use in the production of hybrid sunflower seed.

(5) The name under which any seed parent, male pollinating parent or commercial hybrid is certified, shall be the same as the designation given by the originator or originating agency.

(6) The entire acreage in any isolated seed production plot or in a given seed production field must be eligible and must be inspected.

(7) Pollen rows must be identified by stakes at each end.

§10.19. Tolerances and Detasseling Requirements for Corn.

(a) Pollen rows in each field must be identified by stakes at each end.

(b) Upon request, a representative of the firm applying for certification of hybrid corn seed will accompany the inspector to each field, subject to certification at least 10 days prior to detasseling.

(c) Single cross fields submitted for inspection for the foundation class will not be approved if, at any one inspection more than one-fifth of 1.0% of the stalks of the female parent have shed pollen and at the same time more than 1.0% of the stalks of the female parent have receptive stalks. Any plant in an inbred or single cross field submitted for inspection for the foundation class that is shedding pollen in male sterile rows must be completely destroyed at pollinating time to eliminate the possibility of its seed production.

(d) Commercial hybrid seed fields submitted for inspection for certification will not be accepted if at any one inspection more than 1.0% of the stalks of the female parent have shed pollen and at the same time more than 5.0% of the stalks of the female parent have receptive silks. The total for three inspections shall not exceed 2.0%.

(e) Detasseling.

(1) Tassels shall be removed thoroughly enough so that not more than 1.0% of the plants in seed rows on any one inspection, or not more than 2.0% of the total of any three inspections, shall have shed pollen while more than 3.0% of the seed parent plants have receptive silks. Such percentage is to be determined on the basis of stalks large enough to be in the detasseling stage.

(2) The following shall be used in defining a shedding tassel and a receptive silk.

(A) Shedding tassel. In fertile fields, a shedding tassel shall be considered as shedding or having shed pollen when there are two inches or more of the exposed center spike and/or panicle branches showing exerted anther sacs. One- fifth of a shredding tassel shall be counted if a total of less than two inches of the center spike and/or panicle branches show exerted anther sacs. In sterile fields, tassels shedding less than 50% pollen shall be counted as one-tenth

of a full tassel. The exerted anther sacs on cytoplasmic male sterile seed parents must be shedding if classed as a shedding tassel.

(B) Receptive silks. Receptive silks shall be regarded as susceptible for fertilization when any fresh turgid silks are showing on the ear. As soon as a silk wilts it is regarded as fertilized, although it may not become brown or dry for one or two days after fertilization.

(f) A male sterile ear parent can be used to produce certified hybrid corn seed by either of the following two methods.

(1) Seed of the normal fertile ear parent must be mixed with the seed of the male sterile ear parent of the same pedigree, either by blending in the field at harvest or by size at processing time. The ratio of male sterile ear parent seed to normal ear parent seed shall not exceed two to one.

(2) The pollen parent must involve a certified pollen restoring line or lines so that not less than one-third of the plants grown from hybrid corn seed produces pollen which appears to be normal in quantity and viability.

§10.20. Bagging Procedures for Grain and Forage Type Sorghum.

(a) Requirements for production of registered seed for growers' own increase or for commercial distribution. (It is recommended that new growers obtain the assistance of the inspector or an established grower to learn bagging techniques.)

(1) A paper bag of adequate size and good quality should be used. Bags may be tied or fastened with wire staples.

(2) Bagging should be started when the first plants come into full boot, but may be done any time before heads shed pollen.

(3) The grower shall notify the Regional Office in the area in which he resides of the date he expects to begin bagging.

(4) Good, thrifty plants which have had an opportunity for normal development should be selected. Bags should be placed over the head and securely fastened.

(5) The grower should raise the bags on the stalk when necessary to prevent the head from puncturing the bag. All heads which become exposed must be discarded immediately. Bags should remain on the plants until the fertilization is complete. Time required for completion of fertilization ranges from ten days to two weeks.

(6) After fertilization is completed on the bagged heads, the paper bags shall be split open, pulled down from over the head, and left fastened to the stalk. The bagged heads can thus be identified when they are ready for harvest.

(7) When the seed from the bagged heads are fully mature, they should be hand headed, stored, and allowed to thoroughly dry. Seed must be threshed or rubbed out, properly identified, and stored under conditions to prevent any mechanical mixtures.

(b) Supplemental requirements for production of registered sorghum seed for commercial distribution. Growers requesting authority to produce bagged seed for commercial distribution must meet all requirements set forth by the State Seed and Plant Board and, in addition, must conform to the following regulations:

(1) The grower, at the discretion of the State Seed and Plant Board, may be required to appear before said board, to take an oral or written examination as evidence of his knowledge, skill, and ability, and give evidence of adequate facilities for the production of bagged seed.

(2) The grower must submit, at the time of filing his application for inspection for certification, a statement of his intention to bag seed for commercial distribution, giving variety, the approximate number of heads to be bagged, source of seed, and such other information as may be requested.

(3) Growers employing common or unskilled labor in their bagging operations shall be required to give personal supervision in the matter of selecting plants, either through individual selection or intensive roguing ahead of bagging.

(4) Growers are required to notify the Regional Office in the area in which they reside of the:

(A) time bagging operations will be started;

(B) time of harvesting; and

(C) time of threshing.

(5) All heads bagged must be hand harvested and individual heads selected prior to threshing. The grower is to give his personal attention to the harvesting and threshing.

(6) Threshing must be done by hand-rubbing or by combines, provided such machines are cleaned under the direct supervision of an agent of the department.

(7) Bagged seed must be sacked, labeled, sealed, stored, and properly identified and must be accessible at all times to the inspector or agents of the Seed Quality Program.

§10.21. Requirements and Standards for Hybrid Sorghum Varietal Purity Grow-outs.

(a) Test planting requirements.

(1) Male sterile lines, pollinator lines, and all sorghum hybrid seed must be test-planted (varietal purity grow- out test). Such test must be conducted under the supervision of the Seed Quality Program, as the enforcement agency. The required test for male sterile lines, pollinator lines, and hybrid sorghum (grain types) must consist of not less than 1/10 acre of not less than 3,000 plants in one location. The required test for forage and grass type hybrids must consist of not less than 1/20 acre of not less than 1,000 plants in one location. It will be the responsibility of the seed producer to notify his or her area Regional Office in the area where the seed is stored when the lot of seed is ready to be sampled. Samples must be drawn as directed by the department. Two pounds of seed will be required for each 1/10 acre test and one pound of seed for each 1/20 acre test. The test will be inspected during the bloom stage by approved inspectors of the department.

(2) A sample considered to be on the borderline between acceptance and rejection or a sample rejected by the department may be inspected by a sorghum advisory committee appointed annually by the State Seed and Plant Board. The committee will consist of two approved seed certification inspectors from the department, two Texas certified hybrid sorghum seed growers, and one member of the Texas Agricultural Experiment Station. The committee will advise the director of the Seed Quality Program of their recommendations. The seed producer will have the privilege of having at least a one acre plot (of a lot rejected in the grow-out test) of grain and forage hybrids planted for reconsideration by the department and the advisory committee. In the case of male sterile or pollinator lines planted for reconsideration, the test will be at least 2/5 acre. The

same controls will apply to the larger plot that are applicable to the 1/10 or 1/20 acre tests.

(3) A fee of $50 for each sample grown for reconsideration must be paid the Texas Department of Agriculture, and the travel and per diem expenses of department personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

(4) Removal of any plants from any of the aforementioned grow-out tests at any time by the seed producer or by anyone else, with his knowledge, prior to the acceptance or rejection of the lot represented will immediately cancel the eligibility of the producer to certify.

(b) Varietal purity grow-out test standard. Maximum objectionable sorghum plants permitted in the following.
FIGURE : 4 TAC §10.21.(b)

§10.22. Requirements and Standards for Sunflower Varietal Purity Grow-outs.

(a) All production of female seed parents, pollinating seed parents, and commercial hybrids must be test-planted (variety purity grow-out test). Such test must be conducted under the supervision of the Seed Quality Program, as the enforcement agency. The required tests must consist of not less than 1/10 acre of not less than 2,000 plants in one location. It will be the responsibility of the seed producer to notify his or her area Regional Office in the area where the seed is stored when the lot of seed is ready to be sampled. Samples must be drawn as directed by the department. One pound of seed will be required for each 1/10 acre test. The test will be inspected during the bloom stage by approved inspectors of the department.

(b) A sample considered to be on the borderline between acceptance and rejection or a sample rejected by the department may be inspected by an advisory committee annually appointed by the State Seed and Plant Board. The committee will consist of two approved seed certification inspectors from the department, two Texas certified seed growers, and one member of the Texas Agricultural Experiment Station. The committee will advise the director of the Seed Quality Program of their recommendations. The seed producer will have the privilege of having at least a 2/5 acre plot (of a lot rejected in the grow-out test) planted for reconsideration by the department and the advisory committee. The same controls will apply to larger plots that are applicable to the 1/10 acre tests.

(c) A fee of $50 for each sample grown for reconsideration must be paid to the Texas Department of Agriculture, and the travel and per diem expenses of department personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

(d) Removal of any plants from any of the aforementioned grow-out tests at any time by the seed producer or by anyone else with his or her knowledge prior to the acceptance or rejection of the lot represented will immediately cancel the eligibility of the producer to certify.

(e) Varietal purity grow-out test standard.
FIGURE: 4 TAC §10.22.(e)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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For further information, please call: (512) 463-7583

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Vegetatively Propagated Pasture Grass And Turfgrass

4 TAC §§10.23-10.28

The new sections are proposed under the Texas Agriculture Code (the Code), §§62.004 and 62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and procedures for the certification of seed and adopt rules for the production and handling of certified seed and plants by licensed producers; the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules to administer the Code; and, the Code, §62.008, which provides the department with the authority to fix and collect a fee for the certification of seed or seed plants.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.23. Application and Amplification of General Certification Standards.

(a) The general requirements, as adopted by the State Seed and Plant Board, are basic and, together with the following specific standards, constitute the standards for certification of vegetatively propagated pasture grass and turfgrass.

(b) Three classes of stocks (foundation, registered, and certified) are recognized under the vegetatively propagated pasture grass and turfgrass standards.

(1) Foundation. Foundation sprigs must be produced from a variety approved by the State Seed and Plant Board tracing back to acceptable sources. Foundation sprigs shall be the initial transplants from breeder vegetative propagating material.

(2) Registered. Registered sprigs must be the initial transplants from foundation sprigs.

(3) Certified. Certified sprigs must be the initial transplants from either foundation or registered sprigs. A grower of the certified class of sprigs may increase his acreage from his own production, provided he has complete control of the sprigs at all times and they are planted on his own farm.

(c) Fields established from foundation or registered sprigs may continue to produce certified sprigs after the first year, providing that application for certification is made each year and the stock is produced in conformity with the certification standards.

§10.24. Land Requirements (Rules Covering Land Prior to Planting).

(a) A field to be eligible for the production of foundation or registered turfgrass sprigs, must have been inspected by a representative of the Texas Department of Agriculture the year preceding the year it is to be planted, and it must have been found free of all other perennial grasses and objectionable weeds. This requirement does not apply to pasture grasses.

(b) A field, to be eligible for production of the certified class of stock, must be inspected by a representative of the department during the growing season. At least two inspections approximately six weeks apart must be made. The field must be found free of all other perennial grasses and objectionable weeds. The second inspection must be made within 15 days of planting. During the interval between the two inspections, the soil must not be mechanically disturbed.

(c) In lieu of the preceding requirements, a field, to be eligible for production of foundation, registration, or certified class stock, may be thoroughly treated with a recommended soil fumigant or chemical treatment and left undisturbed for four weeks, at which time an official inspection must be made to determine if the land is free of perennial grasses and objectionable weeds. After fumigation or chemical treatment, soil conditions must be favorable for seed germination and active plant growth in order to determine if the soil fumigation was effective and will qualify the land for acceptance.

§10.25. Handling the Crop Prior to Inspection.

(a) Fees. The pre-planting inspection fee and annual inspection fee, as shown in Table I of § 10.13 of this title (relating to Acreage Inspection Fees for Certification), is required to be paid.

(b) Applications. All applications for pre-planting inspection and annual inspection must be filed with the Seed Quality Program prior to March 1.

§10.26. Field Inspection.

(a) Pasture grasses. At least one official inspection must be made during the growing season at a time when it is possible to identify any other perennial grasses and/or strains or noxious weeds.

(b) Turfgrasses. At least four official inspections must be made during the growing season at a time when it is possible to identify any other perennial grasses and/or strains or objectionable weeds.

§10.27. Field Standards.

(a) Unit of certification. The entire acreage standing at the time of inspection must be inspected as a unit from a map showing the exact specifications and permanent location of the field.

(b) Isolation.

(1) Pasture grasses. Foundation, registered, and certified sprigs must be isolated from any other strain of the same species or other objectionable species by a distance of at least 30 feet.

(2) Turfgrass (except St. Augustine grass). Foundation, registered, and certified class stock must be isolated from any other perennial grass by a strip at least 10 feet wide. In addition to the required 10 feet of isolation, when the contaminant is a Cynodon spp. producing viable seed, the production field must be isolated by a terrace or a similar barrier approved by the inspector so as to prevent washing of the seed into the production blocks. This barrier will be included in the 10-foot isolation distance.

(3) St. Augustinegrass. Foundation, registered, and certified class stock must be isolated from any other perennial grass and/or objectionable weeds by a strip at least six feet wide.

(c) Specific requirements. Reference should be made to the following table.
FIGURE: 4 TAC §10.27.(c)

§10.28. Stock Handling.

(a) To be eligible for certification, all classes of planting stock at the time of bulk distribution or shipping shall conform to the following standards.
FIGURE: 4 TAC §10.28(a).

(b) General requirements.

(1) Constant care and grower supervision must be maintained throughout harvesting, handling, and packing of stock eligible under the provisions of the program so as to maintain the identity and purity of it. All stock must be measured in bushels when distributed if it is to retain certification status. The standard measure of a bushel is considered to be 1 1/4 cubic feet.

(2) Planting stock is subject to sampling by an approved inspector at any time during the digging season when the material is being packaged or distributed.

(c) Shipment. For pasture grass, planting stock must be packed for shipment in sealed sacks, bags, or other containers that will insure maintenance of planting quality. Such containers must meet the labeling requirements of §10.10(b) of this title (relating to Labels) of the general requirements.

(d) Bulk distribution.

(1) For pasture grass, stock that is not to be shipped need not be packed as for shipment (example: harvesting and loading a customer's truck with sprigs). However, the consumer must be given a certification label for each load.

(2) For turfgrass, sod blocks or bulk stolons must be protected in a manner to prevent drying out, in order to ensure viability of grass upon delivery. The consumer must be given a certification label for each load. The amount of sod or stolons must be shown on each label for each load.

(e) Label reporting system.

(1) Certification labels will be available on which space will be provided for the certified producer to write the date of sprig harvest and the bushels in the container or load it represents.

(2) Report forms will be available on which the certified producer must record the label number, the date of harvest, and bushels the label represents (example: GO682790 5-10- 68 - 20 bu.). The report of use of certified labels must be sent to the Seed Quality Program at least once a month.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609304
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Forest Reproductive Material

4 TAC §10.29, §10.30

The new sections are proposed under the Texas Agriculture Code (the Code), §§62.004 and 62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification of seed and adopt rules for the production and handling of certified seed and plants by licensed producers; the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code; and, the Code, §62.008, which provides the department with the authority to fix and collect a fee for the certification of seed or seed plants.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.29. Application and Amplification of General Certification Standards.

(a) The general requirements, as adopted by the State Seed and Plant Board are basic, and together with the following specific standards constitute the standards for certification of forest reproductive material. Forest reproduction material will include seed, seedlings, and propagules of all species normally used in forestry including specialized products or uses such as Christmas trees, windbreaks, etc.

(b) In addition to the definitions found at §10.1 of this title (relating to Definitions), the following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certified forest tree seed and seedlings (blue label) - Certified forest tree seed and seedlings from trees of proven genetic superiority, as defined by the following standards produced so as to assure genetic identity. (Seeds and seedlings from interspecific hybrids of forest trees may be included.) Certified seedlings (blue label) must be the first generation from certified seed (blue label). In addition, the following subclass may be acceptable for certification.

(2) Certified selected forest tree seed and seedlings (green label) - Seed and seedlings from untested parentage of rigidly selected trees, including elite trees, or stands that have promise, but not proof, of genetic superiority. Cultivars, as well as clones, may be certified. Certified selected seedlings (green label) must be the first generation from certified selected seed (green label).

(c) For both classes of forest tree seed and seedlings, the exact geographic source of the parent trees and the stand history must be known. Location of the source shall be given at least down to the section or comparable land survey unit. (Alternatively, in the case of seed and seedlings from seed orchards containing selected stocks from a number of separate sections, the location of the orchard shall be given and the exact sources and elevations of its individual components shall be kept on file and furnished on request.) In addition, the average height and age of the trees from which the seed was collected or from which the seedlings were grown must be known.

(d) Inspectors for forest tree seed and seedling certification shall be approved by the State Seed and Plant Board and shall be professional foresters and/or others trained specifically for the job.

(e) Seed production.

(1) Handling the crop prior to inspection.

(A) Fees. The inspection fee as shown in Table I of §10.13 of this title (relating to Inspection Fees for Certification) is required to be paid. The acreage fee may be figured at the rate of one acre per tree or the gross acreage occupied by all trees inspected. The lower figure will be used to determine the total acreage fee.

(B) Applications. All applications for inspection of forest tree seed must be filed with the Seed Quality Program at least 30 days prior to flowering.

(2) Field inspections.

(A) At least two official inspections must be made. One inspection must be made prior to pollination. At this time, compliance in regard to roguing and isolation will be checked. One inspection must be made prior to seed maturity at which time the size of the crop will be estimated.

(B) Inspections are required only in years in which certified seed production is planned after the initial inspection, provided that subsequent inspections shall be not more than five years apart.

(C) Inspections may be made at any time during cone collection, seed extraction, and cleaning without prior notice.

(3) Field standards.

(A) General requirements.

(i) Definition of terms.

(I) The term "cone" shall include the seed contained therein.

(II) The term "scion" shall include all materials for vegetative propagation.

(III) The term "elite tree" shall refer to an individual tree whose genetic superiority has been proven for the traits to be certified.

(ii) Unit of certification. An area or a portion of an area may be certified. The portions of an area not meeting certification requirements shall be delineated with a painted boundary mark (color contrasting with other boundaries), and cones produced on the disqualified area are not eligible for certification. A clear and distinct boundary line will be marked with paint between an area and its isolation strip. The outer boundary of the isolation strips shall be marked with a contrasting color or symbol.

(iii) Isolation. The isolation as stated in the specific requirements will be applicable for pine species. Isolation for other species will be included as they become available.

(B) Specific requirements.

(i) Certified blue label seed production– Seed Orchards.

(I) Stand composition. The stand will be composed of a minimum of 15 producing clones of trees. Each tree shall bear identity numbers and/or letters traceable to records of the ortet (or parentage in the case of seedling stock) and records shall be available for inspection. The arrangement shall be such as to maximize cross pollination between clones and to minimize selfing.

(II) Progeny tests.

(-a-) All clones in a seed orchard must be progeny tested before being eligible for production of certified (blue label) seed. Records of the progeny tests shall be available to the certifying agency. The field plots of the progeny tests must be maintained until such time as the requirements of the certifying agency are satisfied which will be at least one-half rotation age for volume and less for other characters.

(-b-) Seed that are produced prior to completion of progeny tests may be sold as selected (green label) seed provided all other requirements are met.

(III) Isolation. A minimum of 400 feet surrounding the orchard shall be free of all trees producing contaminating pollen. Controlled pollinated seed does not require the isolation zone.

(ii) Certified selected green label seed production–Seed Production Areas.

(I) Stand requirements. The stand must initially contain a sufficient number of trees of the desired species to permit rigorous selection of trees to be retained for seed production. The stand must be of sufficient age and diameter for reliable crop tree determination. Stands shall not have been previously thinned except where it can be shown that thinning was from below or from the codominants of poor quality for the species to be used in seed production.

(II) Stand treatments.

(-a-) Roguing. All trees infected with diseases of economic importance to timber production shall be removed from the area. Trees of below average vigor (based on the dominant and codominant trees in the original stand) and trees having undesirable form characteristics as specified for the species and end use will be removed.

(-b-) Stand composition. Only trees of average or above vigor and form and average or below in branch size and free from pests shall remain. Minimum requirements are 10 trees per acre to minimize selfing and to maximize cross pollination.

(-c-) Isolation. The area shall be free of contaminating pollen. An isolation strip shall be maintained. A strip 400 feet wide adjacent to the production area shall be free of all species of trees which will normally cross pollinate naturally with the species of the production area, except that this strip may contain trees of the same species providing that it meets the standards of roguing and stand composition of the production area.

(III) Elite trees including subspecies.

(-a-) Individual characteristics. A tree must possess certain characteristics such as superior growth, wood quality, gum yield, etc., which can be described and must be capable of differentiation from other trees of the same species on the site.

(-b-) Isolation. Nonprogeny tested open pollinated produced seed may be certified as selected tree seed if a 400-foot isolation strip is rogued to seed production area standards.

(-c-) Identification. Each tree shall bear identifying numbers and/or letters traceable to records containing complete description of the tree and location of tree.

(4) Seed handling.

(A) Seed and/or cones shall be handled so as to prevent contamination and to maintain the identity of the lot. Each lot shall be identified at all times throughout handling. Lots of cones shall be isolated in drying by seedproof barriers to prevent mixing of seed as the cones open. All drying racks, bins, areas, etc. shall be thoroughly cleaned prior to use.

(B) No lot of tree seed may contain more than 1,000 pounds.

(5) Samples and testing of seed.

(A) For seed of species not covered by the rules for testing seed, as adopted by the Association of Official Seed Analysts, the analysis and tests shall be in accordance with the rules of ISTA or appropriate state or governmental laboratories as determined by the department.

(B) Tests will be acceptable only from laboratories approved by the State Seed and Plant Board in agreement with the department. Laboratory tests must be completed within nine months, exclusive of the month in which the test was completed, prior to shipment of seed, and the seed must have been stored in airtight moisture proof containers at a moisture content less than 10% and temperature below 30 degrees Fahrenheit from the time of sampling until shipment.

(6) Seed standards.

(A) Pine species.

FIGURE: 4 TAC §10.29.(e)(6)(A)

(B) Other species. Standards for other species and/or groups of species will be included as they become available.

(7) Label requirements.

(A) The certification label shall include the information as follows:

(i) elevation to the nearest 500 feet of the original geographic source and the average height and age of the trees from which collected. If available, site index (the capacity of a given site to produce trees as measured by the height of the trees at a specific age) may be recorded instead of the tree height and age;

(ii) producer's name and address or code designation;

(iii) species (and subspecies, if appropriate);

(iv) lot number;

(v) net weight.

(B) An analysis tag or label is required on each certified seed container giving the information as follows:

(i) common name of the species (and subspecies, if appropriate);

(ii) scientific name of the genus and species (and subspecies, if appropriate);

(iii) net weight;

(iv) lot number (corresponding to lot number on certification label);

(v) year collected;

(vi) geographic origin (location of collection-state and county or other acceptable geographic zone within the state);

(vii) calendar month and year the test was completed and by whom;

(viii) percentage by weight of pure seed;

(ix) percentage by count of full seed;

(x) percentage by weight of inert matter;

(xi) percentage of germination exclusive of hard seed;

(xii) percentage of hard seed, if present;

(xiii) speed of germination, as days to reach 90% of total;

(xiv) pregermination treatment used in test;

(xv) number of seed per pound;

(xvi) name and address of certified seed grower.

§10.30. Seedling Production, Certified (Blue Label), and Certified Selected (Green Label).

(a) Handling the crop prior to inspection.

(1) Fees. The inspection fee as shown in Table I is required to be paid for each nursery site.

(2) Applications. All applications for inspection of forest tree seedlings must be filed with the Seed Quality Program at least 30 days before seed sowing.

(b) Nursery, seedbed, and bundle inspection.

(1) At least two official inspections must be made. One inspection must be made at time of sowing to insure the genetic seed lot applied on for seedling production is sown. One inspection must be made just before plant lifting for compliance with the minimum requirements.

(2) The nursery is subject to inspection at any time without prior notice.

(c) Seedbed standards.

(1) General requirements.

(A) Seed lot restriction. Only one genetic seed lot (species and genetic quality) may be grown on any given area of seedbed. Reference should be made to subparagraph (C) of this paragraph for exception.

(B) Identification. Each seedbed must be identified as to seed (species and genetic quality).

(C) Isolation. A seedbed lot must be separated from another seedbed lot (species and/or genetic quality) by at least a 1 1/2-foot parallel path to the side of the seedbed and on the ends by at least a 10-foot space unsown to any other species.

(D) Roguing. Seedbeds must be rogued for chance windblown seed of wild species of pine. The constant roguing of weeds, noxious weeds, and/or grasses must be practiced throughout the entire seedling production in accordance with sound tree seedling nursery practices.

(E) Diseases, insects, rodents. Every seedbed must show evidence that the producer is carrying out a program to control all known harmful diseases, insects, and rodents that affect the seedlings.

(2) Specific requirements at any inspection. Not more than 0.02% (1:5,000) distinguishable off-species is permitted.

(d) Balings standard.

(1) General requirements.

(A) Lifting. Precaution must be taken so as to prevent contamination of one lot by another and to maintain the identity of each lot under certification.

(B) Diseases and insects. Diseased seedlings or seedlings damaged by harmful insects and/or rodents will not be acceptable.

(C) Size of bale. A standard seedling bale will consist of 2,000 seedlings. However, smaller bales may be packaged on special orders.

(D) Packing the bale. Roots of the seedlings must be packed in wet spaghum peat moss or some other wetting medium acceptable to the certifying agency. The bale must be wrapped in asphalt treated waterproof kraft paper or in lieu of this it may be wrapped in polyethylene lined paper sufficiently strong enough to withstand packing and shipping. A 3/8 inch metal strap, or equivalent wires, must be used around each end of the bale in such a way as to prevent the seedlings, moss, or wetting medium from falling out. A minimum of one 30-inch wooden stake approximately one inch square must be fixed under the metal straps so as to give the bale rigidity.

(2) Specific requirements. The following seedling grade specifications for pine are applicable:

(A) general
FIGURE: 4 TAC §10.30.(d)(2)(A)]

(B) root length: minimum five inches with well developed laterals;

(C) nature of stem: mostly woody, one late surge of flush growth permitted;

(D) bark on stem: present on lower part, usually on entire stem;

(E) swelling on stem: absent;

(F) free of broken or skinned stems, badly skinned or split roots, and stripped needles;

(G) fascicled needles reddish-purple in most seedlings.

(i) Bale tolerance. *Maximum Factor Permitted*
Plants failing to meet pine species grade specification .50%(10:2,000)
Other species of pine None
Noxious weeds, weeds and/or grasses None

(ii) Other species. Standards for other species and/or groups of species will be included as they become available.

(e) Label requirement. The certification label shall include the information as follows:

(1) producer's name and address or code designation;

(2) species;

(3) subspecies, if applicable;

(4) genetic quality;

(5) date packaged;

(6) lot number (identical to lot number of seed from which plant was produced); and

(7) quantity (number of seedlings).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609305
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Miscellaneous Provisions

4 TAC §10.31

The new section is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.31. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Chapter 12. Weights and Measures

Subchapter A. General Provisions

4 TAC §12.1, §12.2

The Texas Department of Agriculture (the department) proposes new §12.1 and §12.2, concerning general provisions. The new sections are being relocated from Chapter 15 as part of the department's reorganization of its regulatory program rules. These new sections are proposed in order to standardize and simplify the weights and measures program authorized in the Texas Agriculture Code, Chapter 13. Proposed new §12.1 defines the terms used in the new subchapters. Proposed new §12.2 specifies the expiration provision for Chapter 12.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Mr. Eskew also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new section will be greater standardization of the department's weights and measures program. There will be no effect on large or small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; and the Code, §12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

Anniversary date - The day each year on which test standards are due a calibration and a license expires.

Approval seal - A seal, provided by the department, that indicates a device has met all of the specifications and requirements of this chapter.

ASTM - American Society for Testing Materials.

Certificate of Authority - Written authorization issued by the department authorizing a public weigher to issue an official certificate.

Certified/Certification - Written verification from a department approved laboratory declaring the accuracy of a licensed inspection company's or licensed service company's test standards.

Commercial transaction - The purchase, offer or submission for sale, hire or award, barter or exchange of an item.

County public weigher - A person elected or appointed to issue an official certificate only in the county for which appointed.

Deputy public weigher - A person appointed by a county public weigher to assist in weighing commodities.

Device - Any pump, scale, or bulk or liquefied petroleum gas meter used in a commercial transaction. Device includes any accessory which may affect accuracy. The term also includes weighing and

measuring equipment in official use for the enforcement of law or for the collection of statistical information by government agencies.

Handbook 44 - NIST publication that sets the specifications, tolerances and other technical requirements for devices.

Licensed inspection company - A company licensed by the department authorized to employ registered technicians who may place devices into service or remove an out-of-order tag and may also perform inspections of LPG meters and ranch scales.

Licensed service company - A company licensed by the department authorized to employ registered technicians who may place devices into service or remove an out-of-order tag.

LPG Meter - A device used for the measurement of liquefied petroleum gas.

NCWM - National Conference on Weights and Measures.

NIST - National Institute of Standards and Technology, United States Department of Commerce.

Official certificate - A certificate declaring the accurate weight or measure of a commodity which includes: the time and date the weight or measure was taken, signature and license number of the public weigher, and the seal of the department.

OIML - International Organization of Legal Metrology.

Out-of-Order tag - A notice attached to a device directing that the device may not be used for commercial service.

Person - An individual, partnership, firm, corporation, or association.

Place in service - An approval for the device to be used.

Ranch scale - A livestock scale which is located on a private ranch and which has a capacity of 5,000 pounds or greater.

Registered technician - An individual registered with the department who may place devices into service and remove an out- of-order tag or, if employed by an inspection company, may also perform inspections of LPG meters and ranch scales.

Sub-kit - A subdivided series of test standards that weigh a total of not less than one pound in avoirdupois units and whose smallest test standard weighs not more than one-sixteenth (1/16) ounce or five-thousandths (0.005) pound.

State public weigher - A person appointed to issue an official certificate anywhere in Texas.

Test - A field examination of a device to determine compliance with the requirements of this chapter.

Test standard - A certified weight or measure used to test a device.

Test kit - A collection of test standards that collectively weigh 30 pounds and that consists of one sub-kit, at least two one-pound standards, and any other combination of standards that allows a scale with a capacity of 30 pounds or less be tested in one-pound increments to capacity.

§12.2. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated, §§2001.021-.038 (Vernon 1996) or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 28, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Subchapter B. Devices

4 TAC §§12.10-12.12

The Texas Department of Agriculture (the department) proposes new §§12.10-12.12, concerning devices. The new sections are being relocated from Chapter 15 as part of the department's reorganization of its regulatory program rules. These new sections are proposed in order to standardize and simplify the weights and measures program authorized in the Texas Agriculture Code, Chapter 13. Proposed new §12.10 addresses the adoption of standards. Proposed new §12.11 specifies the procedure for registration of devices. Proposed new §12.12 establishes the fees for this subchapter.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period that the new sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the new sections. Fees established under the new sections will remain at their current levels.

Mr. Eskew also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be greater standardization of the department's weights and measures program. There will be no effect on large or small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; the Code, §12.016, which provides the department with the authority to adopt rules to administer the Code; and the Code, §13.1151, which provides the department with the authority to charge annual registration fees for registration of certain measuring devices.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.10. Standards.

The department adopts by reference NIST Handbook 44. This handbook is available upon request from the Superintendent of Documents, United States Government Printing Office, 710 North Capitol Street, Washington, D.C. 20402.

§12.11. Registration.

(a) Annual Registration Required. The following devices shall be registered annually:

(1) gasoline, kerosene or diesel fuel pumps;

(2) scales;

(3) bulk meters; and

(4) LPG meters.

(b) Registration Procedure. An applicant shall do the following to register a device:

(1) submit to the department an application. An application may be obtained from the department;

(2) remit a fee, as required by this subchapter; and

(3) notify the department within ten days of any change of billing address or change of ownership.

(c) Certificate of Registration. The certificate of registration shall be made available upon request to an authorized representative of the department at the location where the device is registered.

(d) Expired Registration. If a device registration has been expired for one year or longer, a new registration must be obtained. If additional devices are registered, the expiration date will be the same as any previously registered devices at that location.

§12.12. Fees.

(a) Liquid measuring device or pump: $6.25 (per nozzle).

(b) Bulk metering device: $25.

(c) LPG meter: $25.

(d) Scale (capacity less than 5,000 pounds): $12.50.

(e) Ranch scales: $12.50.

(f) Truck Scales and other large scales (capacity 5,000 pounds or greater): $100.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Subchapter C. Packages and Price Verification

4 TAC §12.20, §12.21

The Texas Department of Agriculture (the department) proposes new §12.20 and §12.21, concerning packages and price verification. The new sections are being relocated from Chapter 15 as part of the department's reorganization of its regulatory program rules. These new sections are proposed in order to standardize and simplify the weights and measures program authorized in the Texas Agriculture Code, Chapter 13. Proposed new §12.20 establishes the requirements for packaged commodities and other items. Proposed new §12.21 addresses the adoption of standards.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Mr. Eskew also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be greater standardization of the department's weights and measures program. There will be no effect on large or small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Agriculture Code (the Code), §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; the Code, §12.016, which provides the department with the authority to adopt rules necessary to administer the Code; and the Code, §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures consistent with federal law.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.20. General Requirements.

(a) Commodities packaged in advance of wholesale or retail sale shall be in compliance with this subchapter and are subject to inspection by the department.

(b) Items, whether or not in package form, advertised by a price sign, card, tag, poster, or other advertisement shall be in compliance with this subchapter and are subject to inspection by the department.

§12.21. Standards.

The department adopts by reference NIST Handbook 133, and NIST Handbook 130, relating to "Packaging and Labeling Regulation"; "Method of Sale Regulation"; and the "Examination Procedure for Price Verification". Handbooks 130 and 133 are available upon request from the Superintendent of Documents, United States Government Printing Office, 710 North Capitol Street, Washington, D.C. 20402.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter D. Metrology

4 TAC §12.30

The Texas Department of Agriculture (the department) proposes new §12.30, concerning metrology. The new section is being relocated from Chapter 15 as part of the department's reorganization of its Regulatory rules. The new section is proposed in order to comply with the statutory changes made by the 74th Legislature, Regular Session, 1995, in accordance with Senate Bill 372, which requires fees for metrology services to be established by department rule. Proposed new §12.30 identifies the services provided by the department's metrology laboratories and establishes the fees for this subchapter.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. Fees established under the new section remain at their current levels.

Mr. Eskew also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be greater standardization the department's weights and measures program. There will be no effect on large or small businesses. There is no anticipated economic cost to persons who are required to comply with the new section as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; the Code, §12.016, which provides the department with the authority to adopt rules to administer the Code; and the Code, §13.115, which provides the department with the authority to set and charge fees for testing done by the department's metrology lab.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.30. Metrology Services.

(a) The department's metrology laboratory provides a service to calibrate standards needing traceability to the national standards. For information on scheduling an appointment for metrology services contact the Austin or Lubbock metrology laboratories.

(b) Metrology services are available based on the following fee schedule:

(1) Weights.

(A) Precision Test. NIST Class "A, B, S, S- 1, M, J"; ASTM Class "1, 1.1, 2, 3"; OIML Class "E1, E2, F1, F2"; and other weights: Not more than 3 kilograms: $25 More than 3 kilograms but not more than 30 kilograms: $50 More than 30 kilograms: $70;

(B) Tolerance Test. NIST Class "P, Q, T, C, F"; ASTM Class "4, 5, 6"; OIML Class "M1, M2, M3"; and other weights: Less than 10 pounds: $2 10 pounds or more but less than 500 pounds: $5 500 pounds or more but less than 2,500 pounds: $10 2,500 pounds or more: $20.

(2) Volume Measures. 5 gallons or less: $10 More than 5 gallons: $10 plus 20 cents for each gallon over 5 gallons.

(3) Tapes, rules, glassware, or other standards per increment tested: $25.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Deputy General Counsel
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Subchapter E. Licensed Service Companies

4 TAC §§12.40-12.43

The Texas Department of Agriculture (the department) proposes new §§12.40-12.43, concerning licensed service companies. The new sections are being relocated from Chapter 15 as part of the department's reorganization of its regulatory program rules. These new sections are proposed in order to implement the new device testing program authorized in the Texas Agriculture Code, Chapter 13. Proposed new §12.40 specifies the requirements for obtaining a license under this subchapter. Proposed new §12.41 explains the application and renewal procedures. Proposed new §12.42 establishes the authority and responsibilities of licensed service companies. Proposed new §12.43 identifies the fee for each class of license.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the proposed new sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the new sections. The effect on state government for the first five year period the new sections are in effect will be an increase in state revenue in the amount of $15,000 per year. There will be no fiscal implications for local government as a result of enforcing or administering the new sections.

Mr. Eskew also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be improved commercial scale and meter service, improved consumer protection and greater standardization of department's weights and measures program. There will be no effect on large and small

businesses. There is an anticipated economic cost of $50 per class of license per year for each licensee who is required to comply with the new sections as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; the Code, §12.016, which provides the department with the authority to adopt rules to administer the Code; and the Code, §13.1012, which provides the department with the authority to register service persons and establish annual registration fees.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.40. License Requirements.

(a) A person shall not employ registered technicians to place devices into service or remove an out-of-order tag unless licensed as a licensed service company. The license is valid for one year and, if not renewed, shall expire on the company's anniversary date.

(b) The department may issue a license to a person who:

(1) has available annually certified test standards meeting the specifications in NIST Handbook 105, for each class of license as follows:

(A) Class 1. Scales, capacity 300 pounds or less: One 30-pound test kit, and additional test weights capable of testing a scale to 100% of its capacity.

(B) Class 2. Scales, capacity more than 300 pounds but not more than 3,000 pounds: One 30-pound test kit, and additional test weights equal to 300 pounds or 25% of the capacity of the scale being tested, whichever is more.

(C) Class 3. Scales, capacity more than 3,000 pounds but not more than 40,000 pounds: Test weights equal to 1,000 pounds or 12.5% of the capacity of the scale being tested, whichever is more, and correction weights in sizes no larger than one-half the minimum graduation of any scale to be tested.

(D) Class 4. Scales, capacity more than 40,000 pounds: Test weights equal to 10,000 pounds or 12.5% of the capacity of the scale being tested, whichever is more, and correction weights in sizes no larger than one-half the minimum graduation of any scale to be tested.

(E) Class 5. Liquid measuring devices, maximum flow rate 20 gallons per minute or less: One five-gallon test measure.

(F) Class 6. Liquid or liquefied petroleum gas (LPG) measuring devices, maximum flow rate more than 20 gallons per minute: One test measure whose capacity exceeds the amount of liquid delivered by the device in one minute at the maximum flow rate.

(2) has available the latest editions of NIST Handbook 44, NIST Publication 12 and this chapter.

§12.41. Application and Renewal Procedure.

(a) An applicant must submit to the department an application. An application may be obtained from the department. An out-of-state licensed service company shall designate on the application an agent who meets the following requirements:

(1) is a citizen of Texas; and

(2) maintains a permanent address within Texas where documents dealing with the administration and enforcement of this law may be served. An out-of-state licensed service company shall notify the department in writing within ten days of any change of their resident agent. Failure to give such notice shall be grounds for suspending the licensed service company's license.

(b) An applicant must submit the appropriate license fee as required by this subchapter.

(c) A copy of a certificate of calibration for test standards certified by an approved laboratory must be on file with the department.

§12.42. Authority and Responsibilities.

(a) Authority. A licensed service company is authorized to place devices into service and remove out-of-order tags.

(b) Responsibilities. A licensed service company shall:

(1) ensure compliance with this chapter and that the device is suitable for its intended use;

(2) submit to the appropriate regional office of the department within ten days, a service report prescribed by the department;

(3) notify the department in writing within ten days of its change of name, address, or business location; and

(4) provide security seals approved by the department to an individual employed as a registered technician.

§12.43. Fees.

The fee for each class of license is $50.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Texas Department of Agriculture
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Subchapter F. Licensed Inspection Companies

4 TAC §§12.50-12.53

The Texas Department of Agriculture (the department) proposes new §§12.50-12.53, concerning licensed inspection companies. The new sections are being relocated from Chapter 15 as part of the department's reorganization of its regulatory program rules. These new sections are proposed in order to implement the new device testing program authorized in the Texas

Agriculture Code, Chapter 13, Subchapter H. Proposed new §12.50 specifies the requirements for obtaining a license under this subchapter. Proposed new §12.51 explains the application and renewal procedures. Proposed new §12.52 establishes the authority and responsibilities of licensed inspection companies. Proposed new §12.53 identifies the fee for each class of license and an inspection fee limit.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the proposed new sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the new sections. The effect on state government for the first five year period the subchapter is in effect will be an increase in state revenue of $500 per year. There will be no fiscal implications for local government as a result of enforcing or administering the new sections.

Mr. Eskew also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be improved commercial scale and meter service, improved enforcement of state weights and measures law, improved consumer protection and greater standardization of department's weights and measures program. There will be no effect on large and small businesses. There is an anticipated economic cost of $50 per class of license per year for each licensee who is required to comply with the sections as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Agriculture Code, the Code, §13.305 and §13.355, which provides the Texas Department of Agriculture with the authority to adopt rules for the issuance of a license to inspectors of LPG meters and ranch scales; the Code, §12.016, which provides the department with the authority to adopt rules to administer the Code; and the Code, §13.304 and §13.354, which provides the department with the authority to establish annual license fees.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.50. License Requirements.

(a) A person shall not employ registered technicians to place devices into service, remove an out-of-order tag or inspect LPG meters or ranch scales unless licensed as a licensed inspection company.

(b) The department may issue a license to a person who:

(1) has available annually certified test standards meeting the specifications in NIST Handbook 105, for each class of license as follows:

(A) Class 1. Scales, capacity 300 pounds or less: One 30-pound test kit, and additional test weights capable of testing a scale to 100% of its capacity.

(B) Class 2. Scales, capacity more than 300 pounds but not more than 3,000 pounds: One 30-pound test kit, and additional test weights equal to 300 pounds or 25% of the capacity of the scale being tested, whichever is more.

(C) Class 3. Scales, capacity more than 3,000 pounds but not more than 40,000 pounds: Test weights equal to 1,000 pounds or 12.5% of the capacity of the scale being tested, whichever is more, and correction weights in sizes no larger than one-half the minimum graduation of any scale to be tested.

(D) Class 4. Scales, capacity more than 40,000 pounds: Test weights equal to 10,000 pounds or 12.5% of the capacity of the scale being tested, whichever is more, and correction weights in sizes no larger than one-half the minimum graduation of any scale to be tested.

(E) Class 5. Liquid measuring devices, maximum flow rate 20 gallons per minute or less: One five-gallon test measure.

(F) Class 6. Liquid or liquefied petroleum gas (LPG) measuring devices, maximum flow rate more than 20 gallons per minute: One test measure whose capacity exceeds the amount of liquid delivered by the device in one minute at the maximum flow rate.

(2) has available the latest editions of NIST Handbook 44, NIST Publication 12 and this chapter; and

(3) maintains liability insurance as required by this subchapter.

§12.51. Application and Renewal Procedure.

The procedure for application or renewal is set forth in subchapter E of this chapter (relating to Licensed Service Companies).

§12.52. Authority and Responsibilities.

(a) Authority. A licensed inspection company is authorized to employ registered technicians who may place devices into service, remove out-of-order tags and perform inspections of LPG meters and ranch scales on behalf of the department.

(b) Responsibilities. In addition to the responsibilities set forth in subchapter E of this chapter, a licensed inspection company shall:

(1) maintain general liability coverage including: premises and operations in an amount not less than: $25,000 per occurrence; or $50,000 aggregate. The liability insurance policy shall be issued by an insurance company authorized to do business in Texas or by surplus lines insurer that meets the requirements of the Texas Insurance Code.

(2) maintain security and accountability by serial number for all approval seals issued to them and return all unused approval seals to the department upon termination of business operations or upon request of the department;

(3) provide approval seals issued by the department to an individual employed as a registered technician authorized to inspect LPG meters or ranch scales;

(4) provide the owner or user of an incorrect LPG meter or ranch scale with a detailed written estimate for the repair of that device;

(5) offer to repair an incorrect LPG meter or ranch scale before placing that device out-of-order;

(6) not collect a fee for the first inspection of a LPG meter or ranch scale after the device is placed out-of-order; and

(7) submit to the appropriate regional office of the department within ten days of the inspection, a test report on a form prescribed by the department.

§12.53. Fees.

(a) The fees for each class of license is $50.

(b) LPG meter or ranch scale inspection by registered technicians shall not exceed $150.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
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Subchapter G. Registered Technicians

4 TAC §12.60, §12.61

The Texas Department of Agriculture (the department) proposes new §12.60 and §12.61, concerning registered technicians. The new sections are being relocated from Chapter 15 as part of the department's reorganization of its regulatory program rules. These new sections are proposed in order to implement the new device testing program authorized in the Texas Agriculture Code, Chapter 13. Proposed new §12.60 specifies the procedure and requirements for obtaining a registration under this subchapter and the examination fee. Proposed new §12.61 establishes the authority and responsibilities of registered technicians.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the proposed new sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the new sections. The effect on state government for the first five year period the new sections are in effect will be an increase in state revenue in the amount of $18,000. There will be no fiscal implications for local government as a result of enforcing or administering the new sections.

Mr. Eskew also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be improved commercial scale and meter service, improved enforcement of state weights and measures law, improved consumer protection and greater standardization of the department's weights and measures program. There will be no effect on large and small businesses. There is an anticipated economic cost of $20 every five years for each registered technician who is required to comply with the new sections as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, the Code, §13.305 and §13.355, which provides the Texas Department of Agriculture with the authority to adopt guidelines to allow a representative of a license holder to perform the functions of the license holder; the Code, §13.1012, which provides the Texas Department of Agriculture with the authority to register a person who installs and services devices; the Code, §12.016, which provides the department with the authority to adopt rules to administer the Code; and the Code, §13.304, §13.354, and §13.1012, which provides the department with the authority to set and collect license and registration fees.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.60. Registration Requirement and Procedure.

(a) An individual may not place a device into service, remove an out-of-order tag or perform inspections of LPG meters or ranch scales for payment of any kind unless he is registered with the department.

(b) The department may issue a registration to each individual who:

(1) submits to the department an application obtained from the department; and

(2) passes a written examination for each class of license which test the applicant's knowledge of Texas Weights and Measures Laws and Regulations, NIST Handbook 44 and NIST Publication 12.

(A) Appointments for these examinations may be made at the Austin metrology laboratory or at one of the department's regional offices.

(B) The minimum passing score for each examination shall be 70%.

(C) An examination can not be taken more than once during any consecutive seven day period.

(c) The registration is valid for a period of five years.

(d) If the applicant is a sole proprietorship, the licensed service company and the registered technician may be the same individual. Likewise, a licensed inspection company and registered technician may be the same individual.

(e) Examination fees for each class of license is $20.

§12.61. Authority and Responsibilities.

(a) Employment. A registered technician shall be employed by a licensed service company or a licensed inspection company before that individual can place a device into service, remove an out-of-order tag or perform inspections of LPG meters or ranch scales.

(b) Authority. A registered technician employed by a licensed inspection company shall place an approval seal on a LPG meter or ranch scale that meets the requirements of this chapter. The approval seal shall be removed from the LPG meter or ranch scale not meeting the requirements of this chapter and shall be placed out-of-order.

(c) Responsibilities. A registered technician shall:

(1) test devices to ensure compliance with this chapter;

(2) use test standards that have been certified on an annual basis by the department or laboratory approved by the department; and

(3) place a department approved security seal on devices to prevent any unauthorized access to the adjusting mechanism unless otherwise authorized by the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter H. Public Weighers

4 TAC §§12.70-12.74

The Texas Department of Agriculture (the department) proposes new §§12.70-12.74, concerning public weighers. The new sections are being relocated from Chapter 15 as part of the department's reorganization of its regulatory program rules. These new sections are proposed in order to standardize and simplify the public weigher program authorized in the Texas Agriculture Code, Chapter 13, Subchapter E. Proposed new §12.70 establishes the requirement for public weighers. Proposed new §12.71 identifies the application procedure. Proposed new §12.72 specifies the bond requirement. Proposed new 12.73 defines the fees for public weighers. Proposed new § 12.74 specifies the records requirement.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Mr. Eskew also has determined that for each year of the first five years the subchapter is in effect the public benefit anticipated as a result of enforcing the new sections will be greater standardization of the department's public weigher program. There will be no effect on large or small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; the Code, §12.016, which provides the department with the authority to adopt rules to administer the Code; and the Code, §13.255, which provides the department with the authority to set and collect a fee for issuance of a public weigher certificate of authority.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.70. General Requirement.

A public weigher may not officially weigh a commodity unless the weigher has obtained from the department a certificate of authority.

§12.71. Application Procedure.

(a) To obtain a certificate of authority, the applicant shall submit to the department an application obtained from the department.

(b) The applicant shall submit a bond as required by this subchapter.

(c) The applicant shall remit a fee as required by this subchapter with the application.

§12.72. Bond.

Any bond executed as a condition for holding office as a public weigher shall be:

(1) signed by a bonding agent licensed by the State Board of Insurance to do business in Texas;

(2) completed on a form prescribed by the department. The bond form may be obtained from the department; and

(3) filed in the following manner:

(A) state public weighers shall file the bond with the department; or

(B) county and deputy public weighers shall file the bond with the office of the county clerk of the county in which the public weigher intends to operate.

§12.73. Fees.

(a) County or Deputy public weigher fee is $100.

(b) State public weigher fee is $400.

§12.74. Records.

A public weigher shall retain in a well bound book, for a period of two years, a copy of each official certificate issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Deputy General Counsel
Texas Department of Agriculture
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Chapter 13. Grain Warehouse

4 TAC §§13.1-13.5

The Texas Department of Agriculture (the department) proposes new §§13.1-13.5, concerning the administration of the Texas Public Grain Warehouse Law. These sections are being relocated from Chapter 15 of this title as part of the department's reorganization of its regulatory rules. The new sections are proposed in order to establish requirements for receiving, storing and handling of grain. Proposed §13.1 defines and clarifies words used in these sections. Proposed §13.2 establishes additional requirements for licenses, warehouses, records and shortages. Proposed §13.3 clarifies requirements for licenses and permits. Proposed §13.4 establishes fees. Proposed §13.5 establishes an expiration provision for these rules. The new sections will set the license and inspection fees for warehousemen in order to conform with statutory requirements.

Margaret Alvarez, coordinator for commodity warehouses, has determined that for the first five-year period these new sections are in effect there will be no fiscal implications on state or local government as a result of enforcing or administering the sections. There will be no increase in state revenue due to enforcing or administering these sections. All fees imposed under these rules will remain at their current levels.

Mrs. Alvarez also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify and eliminate the burden of compliance with antiquated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Margaret Alvarez, Coordinator for Commodity Warehouses, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Agriculture Code, §14.003, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement and administration of the Texas Public Grain Warehouse Law; §14.005, which authorizes the department to collect license fees; and §14.014, which authorizes the department to collect inspection fees.

The code chapter affected by this proposal is the Texas Agriculture Code, Chapter 14, Subchapter A.

§13.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code, Chapter 14, Subchapter A, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

Daily Position Report - A grain warehouse record showing a perpetual inventory of the total quantity of each kind and class of grain received or loaded out, the kind and class of grain remaining in the warehouse and the total storage obligations for each kind and class of grain.

Violation - A failure to comply with any provision or requirement of Chapter 14 or a rule adopted under the authority of that chapter or commission of an offense defined in Chapter 14.

§13.2. General Requirements.

(a) Licenses are not transferable. Any intentions to change ownership shall be immediately reported to the department. In addition, the licensee shall also notify the department in writing within ten days of any change in:

(1) billing address,

(2) agent address,

(3) managers,

(4) authorized personnel to sign warehouse receipts

(b) Warehouse Requirements. A grain warehouse shall be considered suitable for storing, shipping and handling grain if it meets the following:

(1) be weathertight to protect grain from the elements at all times.

(2) be structurally sound so as to provide proper and adequate storage for the commodity being stored and to prevent mixing of grain which requires separate storage.

(3) provide a safe and adequate means of entry and exit to all storage units.

(c) Records. Records required by §14.022 shall be maintained at each grain warehouse location unless otherwise approved by the department.

(1) A licensee shall maintain a complete, correct and legible daily position report which shall be kept current as of the close of each business day.

(2) The daily position report shall declare all grain in the warehouse as either receipted grain, open-storage grain, or company-owned grain. Any change on the daily position report shall be supported by at least one of the following documents:

(A) a signed copy of the contract of purchase. Such contract shall not be part of any scale weight ticket, settlement agreement, or other unrelated document issued by the licensee;

(B) a canceled check;

(C) a canceled grain warehouse receipt; or

(D) a scale weight ticket;

(3) An expired warehouse receipt is non-negotiable and the obligation transfers on the daily position report from warehouse receipted to open storage. The depositor has the option to have a new negotiable warehouse receipt issued after satisfying accrued storage and handling charges, or to leave as an open storage obligation. The licensee has the option to offset any accrued storage and handling charges. Before the offset, the licensee shall provide 30 days advance notice by certified mail to the last known address of the depositor. Such notice shall contain a statement of account including, but not limited to, the kind of grain, quantity, current market price and accrued storage and handling charges. Storage charges may be calculated for the ten-year term at the present rate on the day of the offset, unless the storage rate is indicated on the warehouse receipt.

(4) Serially numbered scale weight tickets shall be issued for each load of grain received at or shipped from a public grain warehouse on the date of shipment or receipt. Each ticket shall show:

(A) the gross, tare, and net weight of the grain, without allowance for shrinkage or other discounts;

(B) the date of transaction;

(C) the kind and class of grain;

(D) an indication as to whether it is inbound or outbound grain;

(E) the name and location of the grain warehouse;

(F) the printed name and the Farm Service Agency farm number or business address of the person to whom the ticket was issued;

(G) the printed name and signature of the person issuing the ticket; and

(H) the name of the person weighing the grain if different from the person issuing the ticket.

(5) Records shall be immediately available for inspection at the licensed location during normal business hours. Upon request by the department, a warehouseman shall furnish copies of all requested records within five business days.

(6) Records shall be retained for a period of not less than two years after the date each liability is satisfied.

(d) Any warehouse with a 3.0% or greater variance between the measured grain position and the grain position as established by the daily position report, on the date of measurement, may be suspended until the shortage is corrected. During the suspension, the department is authorized to seize any unused receipts, the daily position report, and the warehouse license and hold same until the department is satisfied that the shortage is corrected.

§13.3. License and Permits.

(a) Application. A person required to be licensed shall apply on a form prescribed by the department and in addition shall submit a bond; financial statement; verification of insurance, if necessary a successor's agreement, and the fee(s) as required by §13.4 of this title (relating to Fees). The forms may be obtained from the department.

(b) An unexpired license may be renewed when accompanied by the required renewal application; bond; financial statement; verification of insurance, and the fee(s) required by §13.4 of this title (relating to fees). If a person's license has been expired for one year or longer, the person may not renew the license but must comply with the requirements and procedures for obtaining an original license.

(c) The bond, as required by the Texas Agriculture Code §14.009, shall be a single bond, issued by a single corporate surety licensed to do business in the State of Texas.

(d) Unless otherwise approved by the department a person shall obtain a separate license for each location.

(e) Before any change of name, sale, or ownership of a grain warehouse facility, the purchaser shall execute on a form prescribed by the department a successor's agreement with the seller. Such agreement shall provide that all outstanding warehouse storage obligations of the seller are assumed by the purchaser. The successor's agreement shall accompany the purchaser's license application to the department.

(f) A license shall expire on May 31st of each year unless the license is cancelled or suspended.

(g) If a license has expired the grain warehouseman, upon request, shall surrender all unused warehouse receipts to the department.

(h) A license may be denied or revoked if the applicant makes a false statement in connection with the application or omits information requested on the application.

(i) An individual, corporate, or partnership applicant may be denied a license if the applicant has committed a violation of the Texas Agriculture Code, Chapter 14, or had a public grain warehouse license revoked, within two years prior to applying for a license.

(j) A corporate or partnership applicant includes the business entity itself, all corporate or company officers, all partners, and all stockholders or shareholders who own, hold, or otherwise control 25% or more of the corporation's or company's stock or shares. Partnership in this section means any form of partnership and corporate means any business entity that is not a partnership.

§13.4. Fees.

(a) License fees.

(1) The annual and renewal fee for a grain warehouse license is $75.

(2) Initial application fees shall be prorated based on the remaining months of the license year.

(b) Inspection fees. The fee for an annual or requested inspection is $4.00 for each 10,000 bushels or fraction of 10,000 bushels of licensed storage capacity or $100 whichever is greater.

§13.5. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated §§ 2001.021-.038 (Vernon 1996) or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 28, 1996.

TRD-9609316
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Chapter 13. Apiary Equipment Brands

4 TAC §13.10

(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§13.10, concerning expiration provision . The purpose of this repeal is to eliminate unnecessary regulations and to allow the department to relocate regulations to

Chapter 13 from Chapter 15 of this title as part of the department's reorganization of its regulatory program rules.

Bob Tarrant, director for commodity programs, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Tarrant also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a reduction of unnecessary regulations. There will be no effect on large or small businesses. There is no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Bob Tarrant, Director for Commodity Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Texas Agriculture Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 131, Subchapter C.

§13.10. Expiration Provision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Chapter 14. Agricultural Protective Act

4 TAC §§14.1-14.4

The Texas Department of Agriculture (the department) proposes new §§14.1-14.4, concerning handling and marketing of vegetables, handling and marketing of citrus fruit, and the Produce Recovery Fund (Fund). These new sections are being proposed in order to comply with statutory changes made by the 74th Legislature, Regular Session, 1995, in accordance with Senate Bill 251. Proposed §14.1 defines words used in these sections. Proposed §14.2 identifies requirements for purchasing citrus fruit. Proposed §14.3 sets fees for a license, registration, identification card, fund, and claim filing. Proposed §14.4 establishes an expiration date.

Margaret Alvarez, Coordinator for the Agricultural Protective Act, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government as a result of enforcing or administering these sections. There will an estimated increase in funding to the produce recovery fund in the amount of $11,175 annually due to an increase in produce recovery fund fees. There will be no fiscal implications for local government as a result of enforcing or administering these sections.

Ms. Alvarez also has determined that for each year of the first five years the proposed new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be improved enforcement of the Agricultural Protective Act. The anticipated economic cost to small businesses which are required to be licensed is limited to a fee increase from $50 to $250 for the Produce Recovery Fund. All other licensing fees imposed under these sections will remain at current levels.

Comments on the proposal may be submitted to Margaret Alvarez, Coordinator, Agricultural Protective Act, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the administration of the Texas Agriculture Code, Chapters 101, 102, and 103, concerning the handling and marketing of Texas grown citrus fruit and vegetables, and the Produce Recovery Fund; §§101.006 and 102.006, which authorize the department to establish license and registration fees; §§101.010 and 102.010, which authorize the department to establish a fee for a buying or transporting agent; §103.005, which authorizes the department to establish a fee for filing a claim with the Produce Recovery Fund program; and §103.011, which authorizes the department to establish fees to be paid by licensees to the Produce Recovery Fund.

The code chapters affected by this proposal are the Texas Agriculture Code, Chapters 101, 102, and 103.

§14.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code, Chapters 101, 102, and 103, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

Agent - An employee authorized to act for and on behalf of a licensee as either a buying agent or transporting agent.

Claim - A complaint filed with the department alleging a violation of the terms or conditions of a contract involving citrus fruit and/or vegetables grown in Texas.

Citrus Fruit - Grapefruit and oranges.

Licensee - A person who holds a license issued under the Texas Agriculture Code, Chapters 101 and 102.

Produce - Citrus fruit and vegetables grown in Texas.

§14.2. Citrus Fruit Proof of Ownership.

A licensee or a packer, processor, or warehouseman may not receive or handle citrus fruit without requiring the person from whom the citrus fruit is purchased or received to furnish proof of ownership on a form approved by the department.

§14.3. Fees.

(a) License/registration/identification card fees.

(1) A license fee is $75.

(2) The registration fee for a cash dealer is $25.

(3) The fee for each identification card is $1.

(b) Produce recovery fund fee. In addition to a license fee, an annual fee of $250 shall be paid at the time of making the license application.

(c) Claim filing fee. A claim must be accompanied by a fee of $15.

§14.4. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated §§2001.021-.038 (Vernon 1996) or specific reactivation by the department, all sections in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 26, 1996.

TRD-9609195
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Chapter 15. Consumer Services Division

Texas Weights and Measures

4 TAC §§15.1-15.6, 15.8, 15.9, 15.11-15.13

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§15.1-15.6, 15.8-15.9, and 15.11-15.13, concerning introduction, definitions, technical requirements for commercial weighing and measuring devices, labeling-name and address, labeling-quantity, labeling-exemptions, declaration of identity and price, registration of servicemen and service agencies, registration of weighing and measuring devices, method of sale of retail petroleum fuels, and requirements for the inspection of the net contents of random weight and standard weight packages. These sections are being repealed in order to reflect the adoption of an entirely new chapter 12, concerning weights and measures.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Eskew also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be greater standardization of TDA's weights and measures program. There will be no effect on large or small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; and the Code, § 12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§15.1. Introduction.

§15.2. Definitions.

§15.3. Technical Requirements for Commercial Weighing and Measuring Devices.

§15.4. Labeling-Name and Address.

§15.5. Labeling-Quantity.

§15.6. Labeling-Exemptions.

§15.8. Declaration of Identity and Price.

§15.9. Registration of Servicemen and Service Agencies.

§15.11. Registration of Weighing and Measuring Devices.

§15.12. Method of Sale of Retail Petroleum Fuels.

§15.13. Requirements for the Inspection of the Net Contents of Random Weight and Standard Weight Packages.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 28, 1996.

TRD-9609317
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Metrology

4 TAC §§15.21, 15.22, 15.24, 15.25

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§15.21-15.22 and §§15.24-15.25, concerning introduction, definitions, registration, requirements for registered servicemen and tolerance specifications for reference

standards and field standards. The purpose of the repeals is to reflect the adoption of an entirely new chapter 12, concerning weights and measures.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals .

Mr. Eskew also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be greater standardization of TDA's weights and measures program. There will be no effect on large or small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; and the Code, § 12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§15.21. Introduction.

§15.22. Definitions.

§15.24. Requirements for Registered Servicemen.

§15.25. Tolerances and Specifications for Reference Standards and Field Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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4 TAC §15.23

(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §15.23, concerning registration and testing of antifreeze. The purpose of this proposal is to repeal rules relating to antifreeze registration and to comply with statutory changes made by the 74th Legislature, Regular Session, 1995, in accordance with Senate Bill 372.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Eskew also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated is a reduction in state regulation. There will be no effect on large or small businesses. There is no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, the Code, §16.008, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 16, concerning antifreeze regulations; and the Code, § 12.016, which provides the department with the authority to adopt rules necessary for administration of the Code..

The code affected by this proposal is the Texas Agriculture Code, Chapter 16.

§15.23. Registration and Testing of Antifreeze.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Texas Egg Law

4 TAC §§15.41-15.50, 15.53-15.56

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§15.41-15.50 and §§15.53-15.56 concerning Texas Egg Law. The repeals are proposed in order to allow for the proposal of new sections to clarify existing language in the current regulations and provide additional information to persons in the egg industry regarding procedures to follow in complying with the regulations. The department is proposing new §§15.1-15.13 to replace these sections.

Margaret Alvarez, coordinator for egg quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mrs. Alvarez also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a reduction in confusion concerning regulatory requirements relating to shell eggs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Margaret Alvarez, Coordinator for Egg Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeals are proposed under the Texas Agriculture Code, §132.003, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement and administration of the Texas Agriculture Code, Chapter 132 concerning regulation of egg quality.

The Texas Agriculture Code, Chapter 132 is affected by this proposal.

§15.41. Introduction.

§15.42. Definitions.

§15.43. Who Must Obtain a License.

§15.44. Labeling.

§15.45. False or Deceptive Labeling.

§15.46. General Information.

§15.47. Reports and Records.

§15.48. False Advertising.

§15.49. Temperature and Sanitary Requirements.

§15.50. Exeptions to Texas Egg Law.

§15.53. Cold Storage Requirements.

§15.54. USDA Plant Numbers.

§15.55. Texas Department of Agriculture Chart for Computation of Egg Inspection Fee on Partial Cases.

§15.56. Special Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Texas Grain Warehouse

4 TAC §§15.71-15.74, 15.77, 15.78

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§15.71-15.74 and §§15.77-15.78, concerning bond, requirements for changing positions of warehouse grain, suspensions of warehouses with shortages of variances of 3.0% or more, assigned successor's agreement assuming outstanding liabilities, grain warehouse fees, regulation of expired warehouse receipts. These sections are being repealed because the enabling legislation adequately describes the requirements for this program and new rules are proposed under §§13.1-13.5 for the Texas Public Grain Warehouse Law.

Margaret Alvarez, coordinator for commodity warehouses, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Alvarez also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be reduced state regulations. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Margaret Alvarez, Coordinator For Commodity Warehouses, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeals are proposed under the Texas Agriculture Code, §14.003, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 14, Subchapter A, concerning the administration of the Public Grain Warehouse Law.

The code affected by this proposal is the Texas Agriculture Code, Chapter 14, Subchapter A.

§15.71. Bond.

§15.72. Requirements for Changing Positions of Warehouse Grain.

§15.73. Suspension of Warehouses with Shortages of Variances of 3.0% or More.

§15.74. Assigned Successor's Agreement Assuming Outstanding Liabilities.

§15.77. Grain Warehouse Fees.

§15.78. Regulation of Expired Warehouse Receipts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture

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Public Weighers

4 TAC §§15.141-15.146

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§15.141-15.146, concerning definitions, county public weighers, appointment of deputy public weighers, address sheet, bond, and revocation or suspension of the certificate of authority of a public weigher. These sections are being repealed in order to reflect the adoption of an entirely new chapter 12, concerning weights and measures.

James H. Eskew coordinator for weights and measures, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Eskew also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be greater standardization of the Texas public weigher program. There will be no effect on large or small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; and the Code, § 12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§15.141. Definitions.

§15.142. County Public Weighers.

§15.143. Appointment of Deputy Public Weighers.

§15.144. Address Sheet.

§15.145. Bond.

§15.146. Revocation or Suspension of the Certificate of Authority of a Public Weigher.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 28, 1996.

TRD-9609322

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Liquefied Petroleum Gas (LPG) Meters

4 TAC §§15.151-15.163

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§15.151-15.163, concerning definitions, licensed device testers, late fees, licensee representatives, equipment and standards, insurance requirements, authority and responsibilities of LPG meter testers, certification of standards and testing equipment, inspection, denial, suspension and revocation of licenses and registration, administrative penalty, civil penalty; injunction, and criminal penalty. The purpose of this repeals are to reflect the adoption of an entirely new chapter 12, concerning weights and measures.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Eskew also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be greater standardization of TDA's weights and measures program. There will be no effect on large or small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; and the Code, § 12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§15.151. Definitions.

§15.152. Licensed Device Testers.

§15.153. Late Fees.

§15.154. Licensee Representatives.

§15.155. Equipment and Standards.

§15.156. Insurance Requirements.

§15.157. Authority and Responsibilities of LPG Meter Testers.

§15.158. Certification of Standards and Testing Equipment.

§15.159. Inspection.

§15.160. Denial, Suspension and Revocation of Licenses and Registration.

§15.161. Administrative Penalty.

§15.162. Civil Penalty; Injunction.

§15.163. Criminal Penalty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Ranch Scales

4 TAC §§15.171-15.183

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§15.171-15.183, concerning definitions, licensed ranch scale testers, late fees, licensee representatives, equipment and standards, insurance requirements, authority and responsibilities of ranch scale testers, certification of standards and testing equipment, inspection, denial, suspension and revocation of licenses and registration; administrative penalty, civil penalty; injunction, and criminal penalty. The purpose of this repeals are to reflect the adoption of an entirely new chapter 12, concerning weights and measures.

James H. Eskew, coordinator for weights and measures, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Eskew also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be greater standardization of TDA's weights and measures program. There will be no effect on large or small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James H. Eskew, Coordinator For Weights and Measures, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, the Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; and the Code, § 12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§15.171. Definitions.

§15.172. Licensed Ranch Scale Testers.

§15.173. Late Fees.

§15.174. Licensee Representatives.

§15.175. Equipment and Standards.

§15.176. Insurance Requirements.

§15.177. Authority and Responsibilities of Licensed Ranch Scale Testers.

§15.178. Certification of Standards and Testing Equipment.

§15.179. Inspection.

§15.180. Denial, Suspension and Revocation of Licenses and Registration.

§15.181. Administrative Penalty.

§15.182. Civil Penalty; Injunction.

§15.183. Criminal Penalty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 28, 1996.

TRD-9609324
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Miscellaneous Provisions

4 TAC §15.200

(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §15.200, concerning expiration provision. This repeal is proposed because Chapter 15 is being repealed and replaced with new sections as part of the department's reorganization of its regulatory program rules.

Bob Tarrant, director for commodity programs, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Tarrant also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as

a result of enforcing the repeal will be reduced state regulations. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Bob Tarrant, Director For Commodity Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, Chapter13; and the Texas Agriculture Code §§14.003, 17.005, 96.002, and 132.003, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning Weights and Measures; Chapter 14, Subchapter A, concerning Public Grain Warehouse Law; Chapter 17, concerning Alcohol Fuels and Fuel Alcohol Equipment, Chapter 96, concerning Sampling of Grain for Grading Purposes; and Chapter 132, concerning Texas Egg Law.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13, Chapter 14, Subchapter A, Chapter 17, Chapter 96 and Chapter 132.

§15.200. Expiration Provision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 28, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Chapter 15. Egg Law

4 TAC §§15.1-15.14

The Texas Department of Agriculture (the department) proposes new §§15.1-15.14, concerning the Texas Egg Law. These sections are being relocated within chapter 15 as part of the department's reorganization of its regulatory program rules. The new sections replace §§15.41-15.56 of Chapter 15. The new sections are proposed to clarify and modernize the regulations in response to standard practices in the egg industry and to establish requirements for storing, handling, and marketing of shell eggs. Proposed § 15.1 defines and clarifies words used in these sections. Proposed §15.2 identifies who must obtain a license and who is exempted. Proposed §15.3 identifies how to obtain an application for licensing. Proposed §15.4 sets requirements for license fees. Proposed §15.5 sets special fees paid by licensees. Proposed §15.6 identifies the standards for shell eggs. Proposed §15.7 establishes requirements for the storage of shell eggs. Proposed §15.8 establishes labeling requirements for shell egg cartons and cases. Proposed § 15.9 identifies reporting and record requirements for shell eggs. Proposed §15.10 establishes inspection procedures. Proposed § 15.11 identifies the Egg Marketing Advisory Board. Proposed §15.12 identifies violations. Proposed §15.13 identifies penalties as well as injunctive relief for violations of the egg law. Proposed §15.14 establishes an expiration provision for these rules.

Margaret Alvarez, coordinator for egg quality, has determined that for the first five-year period these new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. All fees imposed under these rules will remain at current levels.

Mrs. Alvarez has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to establish license requirements and fees paid by the egg industry. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with these rules as proposed.

Comments on the proposal may be submitted to Margaret Alvarez, Coordinator for Egg Quality, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §132.003, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the administration of the Texas Agriculture Code, Chapter 132; §132.026, §132.027, §132.028, which authorizes the department to collect license fees; and §132.043, which authorizes the department to collect inspection fees or special fees from persons who first establish the grade, size, and classification of eggs offered for sale or sold in this state.

The code chapter affected by this proposal is the Texas Agriculture Code, Chapter 132.

§15.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Advertisement - Any placard, handbill, sign, newspaper advertisement, radio or television advertisement, store marquee, window or roadside sign, or any other method of calling the consumer's attention to eggs.

Broker - A person who never assumes ownership or possession of eggs, or changes the grade or pack of eggs, but is engaged in the business of acting as agent, for a fee or commission, in the sale or transfer of eggs between producers or dealer-wholesalers as sellers and dealer-wholesalers, processors or retailers as buyers.

Case - A 30-dozen egg container as used in commercial practice in the United States. The term "half-case" shall mean a container of 15 dozen eggs.

Commissioner - The Commissioner of Agriculture of the State of Texas.

Consumer - All persons purchasing eggs for consumption and not resale.

Dealer/Wholesaler - A person engaged in the business of buying from producers or other persons on his own account and selling or

transferring to other dealer/wholesalers, processors, retailers or other persons and consumers. A dealer/wholesaler further means a person engaged in producing eggs from his own flock and disposing of any portion of this production on a graded basis.

Denatured Eggs -

(A) Eggs made unfit for human food by treatment or the addition of a foreign substance; or

(B) Eggs with one-half or more of the shell's surface covered by a permanent black, dark purple or dark blue dye.

Food purveyor - A person, excluding producers as defined in these sections, that buys or sells in the channels of trade, including operators of restaurants, cafeterias, institutions, and hotels, including other places where eggs are served in the shell or broken out for immediate consumption.

Graded basis or fully graded basis - A grading operation in which eggs of "B" quality or better are identified as to both size and/or weight quality.

Inedible eggs - Eggs of the following description: leakers, black rots, white rots, mixed rots, addled eggs, incubated eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring state), and any eggs unfit for human consumption due to causes other than those listed in this section.

Lot - Any given quantity of two or more eggs of a named grade billed on an invoice.

Processor - A person who operates a plant for the purpose of breaking eggs for freezing, drying or commercial food manufacturing (also known as a breaker).

Producer - Any person who produces and disposes of eggs from the output of his personally owned flock, except that:

(A) if a producer obtains eggs from any source other than his own flock and markets or disposes of those eggs along with his own production, he loses his identity as a producer and all eggs handled or produced by him must comply with labeling and inspection provisions of the Texas Egg Law.

(B) if a producer claims a grade designation on any portion of his production, he loses his identity as a producer and his entire production must comply with provisions of the Texas Egg Law.

Retail carton - Any container in which eggs for human consumption are offered for sale within the channels of trade or to the consumer in the State of Texas. A paper bag which has been presacked with one or more eggs by the seller shall be construed as a retail carton and must be stamped or marked with all the information required on a retail carton.

Retailer - A person selling or offering for sale eggs directly to consumers in this state.

Stock carton - A retail carton that does not bear any commercially printed information required by §15.8 (a) of this title (relating to Labeling).

Texas Egg Law - The Texas Agriculture Code Chapter 132 (132.001-132.084.)

Ungraded - A classification of eggs which are marketed by a bona fide producer as defined in this chapter and which have not been handled, graded, or packed by a licensee.

§15.2. Who Must Obtain a License.

(a) License required. A license must be obtained from the department by the following:

(1) any person who buys or sells eggs in this state for the purpose of resale;

(2) each separate facility where eggs are graded and/or stored, packed, or processed;

(3) any person who first establishes the grade, size, and classification of eggs offered for sale or sold in this state;

(4) any egg broker.

(b) Exemptions. This section does not apply to:

(1) producers of eggs who sell only the production of their own flocks without claiming any egg grade or size and without engaging in any previously defined egg marketing activity which would cause them to lose their identity as a producer, except that these producers are required to identify their eggs as "Produced by (producer's name)" and give their address.

(2) a hatchery buying eggs exclusively for hatching purposes;

(3) a hotel, restaurant or other public eating place where all eggs purchased are served by the establishment;

(4) a food manufacturer purchasing eggs for use only in the manufacture of food products, except for a person who operates a plant for the purpose of breaking eggs for freezing, drying or commercial food manufacturing;

(5) an agent employed and paid a salary by a person licensed under this chapter; and

(6) a retailer who sells eggs directly to consumers.

§15.3. Application Required.

Any person requiring a license may obtain an application from the department. An initial application must be accompanied by the appropriate fees as required by §15.4 of this title (relating to Fees). A license may be renewed when accompanied by a renewal application and the fees required by §15.4 of this title (relating to Fees), provided fees required by §15.5 of this title (relating to Special Fees) have been reported and paid. A person failing to renew their license after it has expired will be charged late fees in accordance with Texas Agriculture Code, §12.024, regarding late fees.

§15.4. Fees.

(a) The fee schedule for a dealer/wholesaler is:
Figure: 1 TAC §15.4 (a)

(b) The fee schedule for a processor is:
Figure: 2 TAC §15.4 (b)

(c) The license fee for a broker is $350.

(d) Upon initial application, the license fees shall be prorated based on the remaining months of the license year.

§15.5. Special Fees.

(a) A person licensed under this chapter who first establishes the grade, size, and classification of eggs offered for sale or sold in

this state shall collect a fee of $.03 per case of eggs on the first sale of the eggs.

(b) A processor licensed under this chapter shall pay a fee of $.03 per case of eggs on the processor's first use or change in form of the eggs processed.

(c) Licensees required by this section to collect or pay a special fee shall remit the fee monthly as required by §15.9 of this title (relating to Reports and Records).

§15.6. Standards.

Standards of shell egg quality, grade, and size shall be at least equal to those adopted by the United States Department of Agriculture and the federal Food and Drug Administration.

§15.7. Storage Requirements.

(a) To prevent undue deterioration, all packed eggs shall be stored under refrigeration at the temperature required by the United States Department of Agriculture and the federal Food and Drug Administration. Such eggs shall be transported and held in areas that are clean and sanitary, and shall not be stored or transported with or adjacent to any contaminating source or materials.

(b) Eggs which are shipped across the state line into Texas shall be transported under refrigerated conditions at the temperature required by the United States Department of Agriculture and the federal Food and Drug Administration.

(c) All eggs obtained or purchased from a broker or the mercantile trade exchange must be identified by a lot number affixed to the end of the egg case when first placed in storage. The person that takes first possession of these eggs after receiving them in this state shall be liable for compliance with this subsection and also shall be liable for payment of the fee as prescribed by §15.5 of this title (relating to Special Fees). Upon receiving these eggs, the same person will be held responsible for the proper labeling of these eggs to comply with these rules and the Texas Egg Law.

§15.8. Labeling Requirements.

(a) Commercially printed cartons.

(1) All commercially printed retail cartons utilized must set out the following information except as provided in paragraph (3) of this subsection:

(A) the size, grade, and quantity of the eggs. This information must be legibly printed on the top principal display panel of the carton in boldface type. No reference may be made to any grade or size other than that claimed;

(B) the Texas Egg License number of the licensee, which is the person that places or packs the eggs in the retail container. This license number shall be displayed in legibly printed boldfaced numerals and be placed on the top or either of the two sides of the egg carton in the same vicinity and type size as the address, city, and state of the licensee. This must be the license number of the actual packer rather than that of the second party for whom the eggs may be packed; and

(C) the post office, street address, or route number, and city and state of the Texas licensed facility where the eggs were actually graded, labeled, and/or packed. This information shall be legibly printed in boldface capital letters and shall be displayed on the carton in the same vicinity and type size as the Texas Egg License number.

(2) If a producer exempt under the Texas Agriculture Code, §132.002, is using commercially printed cartons, the cartons must be labeled "ungraded" followed by "produced by (producer's name)" and bear the producer's address in legible printed boldface type and sold directly to the consumer.

(3) Firms having two or more packing operations may, at their election, utilize one inventory of egg cartons which display the Texas egg license number and address of the parent facility. However, each satellite packing station shall identify on each carton the address for the actual location where the eggs were sized and graded, or at its option, the identifying egg license number obtained from the department, which will serve to substitute for the address of the actual location of the applying satellite packing station.

(b) Stock cartons.

(1) If a licensee is using stock cartons, the required information shall be legibly printed on the carton at the packing plant. The minimum information shall be as follows:

(A) grade and size;

(B) Texas license number;

(C) post office, street address, or route number of licensee; and

(D) city and state.

(2) If a producer exempt under the Texas Agriculture Code, §132.002, is using stock cartons, the cartons must be labeled "ungraded" followed by "produced by (producer's name)", the producer's address, and sold direct to the consumer. Such information may be hand printed on the carton, provided it is legible and appears on the top panel of the egg carton.

(3) Labeling information on the stock carton must be placed in a legible fashion and must contrast sharply with the background of the space imprinted.

(c) Cases. Dealer/Wholesaler. All egg cases containing loose eggs for human consumption which are offered for retail or wholesale must bear a label on either or both ends of the case which contains the following information provided, as applicable, in distinctly legible boldface capital type or print. This information may be commercially printed or rubber stamped on the label:

(1) size and grade of eggs (if graded);

(2) Texas egg license number of the licensee;

(3) post office, street address, or route number; and

(4) the city and state of the licensee.

(d) Cases. Producer. If the case is packed by a producer, the label or tag affixed to the case shall read: "ungraded" followed by "Produced by (producer's name)" and bear the complete mailing address of the producer. Such information may be hand printed, provided it is legible.

(e) Eggs packed in retail "breakaway" cartons. If a retail carton can be divided by the consumer or retailer into smaller units for the purpose of selling lesser amounts of eggs, each half or portion of the container must contain full information as to the size and grade, amount remaining in the divided portion, Texas egg license number, address, and city and state of the licensee.

(f) Used Cartons. Egg cartons cannot be reused except by the original packer.

(g) Labeling Exemptions. Permission from the department is required to place the Texas egg license number of the licensee on the end of the carton in lieu of the requirements of subsection (a) (1) of this section. The requesting licensee shall provide the department with the following minimum information:

(1) written permission from the licensee whose Texas egg license number, address, city, and state is commercially printed on the carton;

(2) written permission from the person that owns the brand name or advertising design which is commercially printed on the carton; and

(3) a schedule itemizing:

(A) the number of cartons, by size and brand;

(B) the amount of time required to exhaust the supply;

(C) the license number of the actual facility packing eggs in cartons subject to the request; and

(D) the signature of the person making the request.

(h) United States Department of Agriculture Plant Numbers. Texas licensees may utilize the United States Department of Agriculture plant number on the carton or container in lieu of the Texas egg license number, provided all appropriate state license fees are paid, and further provided that the United States Department of Agriculture number is identified by the prefix "P" when the license number is printed.

§15.9. Reports and Records..

(a) Reporting requirements.

(1) Each licensee shall submit a report as designated by the department and remit any fees due on a monthly basis; however, a licensee at his election may submit the required reports on a quarterly basis, provided that no fees are due. This report is due not later than the tenth day of the following month, if filed monthly, or not later than the tenth day of the following quarter, if filed quarterly. If a fee is due, then the amount of this fee must accompany the reporting forms. Each licensee shall keep a copy of this report on file at the facility for which he is licensed for a period of two years. Any licensee who fails to promptly submit required reports or pay required fees is subject to criminal penalties specified in the Texas Egg Law §132.081. A violation of this section is also subject to a civil or administrative penalty not to exceed $500 per violation. Each day a violation continues may be considered a separate violation for purposes of a penalty assessment. The department may also seek appropriate injunctive relief.

(2) All resident dealer/wholesalers of eggs in the State of Texas must report all eggs purchased and/or produced and the total volume of eggs sold at wholesale and retail. The licensee shall list on this report all plants and/or persons from whom eggs were purchased and accurately indicate whether these eggs were purchased on a graded or ungraded basis. A fee as prescribed by §15.5 of this title (relating to Special Fees) on all sales of eggs on which the licensee established the first grade shall accompany this report.

(3) The dealer/wholesaler operating in the State of Texas who obtains or purchases any eggs from a broker or the mercantile trade exchange is liable for the fee as prescribed by §15.5 of this title (relating to Special Fees) and the required labeling of said eggs, whether graded or ungraded. Furthermore, the Texas dealer/wholesaler shall be liable for the fee and labeling of any eggs purchased or obtained from an out-of-state packer that is not licensed with the State of Texas (whether said eggs are graded or ungraded). Any eggs of this nature received by a Texas dealer/wholesaler that do not bear a label which is in compliance with the labeling requirements of the Texas Egg Law and these rules shall be considered ungraded eggs.

(4) It shall be the responsibility of the Texas dealer/wholesaler that receives out-of-state egg shipments from unlicensed packers to notify the department by way of the report. Upon receiving this information, the department will contact this packer and require that he be licensed with the State of Texas. Failure to comply shall result in immediate stop-sale of all further shipments of eggs from said packer into the State of Texas.

(5) The nonresident dealer/wholesaler shall give a complete breakdown of all sales of graded and ungraded eggs into the State of Texas, listing the individual plant or person to whom eggs were sold and indicating whether these eggs were sold on a graded or ungraded basis. Accompanying the report shall be a check or money order for the amount of the fee as prescribed by §15.5 of this title (relating to Special Fees) on all eggs shipped into Texas on a graded basis.

(6) All licensed processors in this state shall pay a fee as prescribed by §15.5 of this title (relating to Special Fees) on all shell eggs which they handle upon their first use or change in form of eggs processed by them.

(7) All brokers licensed with the State of Texas shall itemize in their reports a true and complete list of all eggs brokered into and in the State of Texas. This list shall include the name and address of all persons from whom eggs were purchased and to whom they were sold and the amount of eggs involved in each transaction. Furthermore, said broker shall indicate whether said eggs were graded or ungraded.

(8) All dealer/wholesalers and processors shall keep a monthly physical inventory of the total amount of eggs on hand at the end of each month; this record shall be kept on file at the facility for which he is licensed for a period of two years. This record shall be available and open for inspection by the department at all reasonable times.

(b) Invoice requirements.

(1) Every licensed dealer/wholesaler and processor shall keep on file at the facility for which he is licensed, for a period of two years, a copy of all invoices of all eggs purchased, (or production records if their own production,) and sales. These invoices shall state the correct grade and size of eggs (if graded) or specify they were ungraded, the name and address of the person from whom eggs were purchased and to whom sold, also the number of dozens or cases included in each transaction and the date thereof.

(2) Every licensed dealer/wholesaler and processor shall deliver with each transaction, sale or delivery, a signed invoice, stating the date, quantity, grade and size of eggs sold and shall keep a copy of each invoice for the same period as stated in paragraph (1) of this subsection.

(3) Every licensed broker shall keep on file at the facility for which he is licensed, a true and complete record of all egg business transacted in or into the State of Texas. This record shall include the name and address of the person from whom eggs were purchased and to whom sold. It shall also state the date of each transaction and indicate the grade and size of said eggs. Ungraded eggs shall be identified accordingly. This information shall be kept on file for a period of two years.

§15.10. Inspections.

(a) Invoices shall be available and open for inspection by the department at all reasonable times.

(b) The department shall for the purpose of enforcing the Texas Egg Law and these rules have the authority to break any form of sealing on any case or retail container. In the event that a broken seal necessitates the repacking of such cases or containers, the original packer and said packer shall absorb all expenses involved.

(c) A carton of eggs with any of the following existing conditions must be removed from a retail display on a daily basis:

(1) cracked eggs;

(2) leaking eggs; or

(3) a combination of cracked and leaking eggs.

§15.11. Egg Marketing Advisory Board.

The Egg Marketing Advisory Board as established in the Texas Agriculture Code, §132.007, advises the department on matters relating to the egg industry and meets at the call of the chairman.

§15.12. Violations.

(a) The label on an egg container shall be considered false or deceptive if:

(1) the eggs in the container are not of the quality or size indicated by the label;

(2) the label bears any statement that is false or misleading;

(3) the label bears any qualifying words with reference to size and quality, which are in any way misleading;

(4) the container bears the word "fresh", "yard", "selected", "hennery", "new-laid", "infertile," "cage", or other words of similar import, or if the eggs in the container are represented in any way as being "fresh" unless they are of "AA" or "A" quality;

(5) the descriptive language or art work on the carton or container misrepresents, misleads, or misinforms the consumer as to the method, locality or quality of egg production; and

(6) the carton or container bears more than one Texas egg license number or the address, city, and state of any person other than the actual packer, unless specific approval has been granted.

(b) Any advertisement of eggs which indicates price shall also indicate the full, correct, and unabbreviated designation of size and grade. To prevent deception of the public, newspaper advertisements must display the required information in print size of not less than eight points. Retail store window banners, posters and similar devices shall display the full, correct and unabbreviated designation of size and grade in lettering of at least 1/4 the size of that used in the price indication.

§15.13. Penalties.

Those persons failing to adhere to the provisions of this chapter, shall be subject to the appropriate criminal penalty as provided in the Texas Agriculture Code, §132.081. A violation of this chapter is also subject to an administrative penalty not to exceed $500 per violation. Each day a violation continues may be considered a separate violation for purposes of a penalty assessment. The department may also seek appropriate injunctive relief.

§15.14. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated §§2001.021-.038 (Vernon 1996) or specific reactivation by the department, all of the section in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Chapter 16. Aquaculture

4 TAC §§16.1-16.4

The Texas Department of Agriculture (the department) proposes new §§16.1- 16.4, concerning aquaculture. These new sections are being relocated from Chapter 27 as part of the department's reorganization of its Regulatory rules. These new sections are proposed in order to standardize and simplify the aquaculture program authorized in the Texas Agriculture Code §§134.005. Proposed §16.1 clarifies the requirements for the marketing of cultured redfish and speckles sea trout. Proposed §16.2 explains the procedure to obtain a license. Proposed §16.3. specifies the fees for a licensee under this chapter. Proposed §16.4. establishes the expiration procedure for this chapter.

Bob Tarrant, director for commodity programs, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Mr. Tarrant also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new chapter will be greater standardization of TDA's aquaculture program. There will be no effect on large or small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Comments on the proposal may be submitted to Bob Tarrant, Director for Commodity Programs Division, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Agriculture Code, (the Code) §134.005, which provides the department with the authority to adopt rules to carry out an aquaculture program; the Code, §134.002, which provides the department with the authority to establish an aquaculture program concerning supervision, licensing and regulation of aquaculture operations in Texas; and, the Code, §134.014, which provides the department with the authority to set and collect a fee for issuance of an aquaculture or fish farm vehicle license.

The code affected by this proposal is the Texas Agriculture Code, Chapter 134.

§16.1. Marketing of Cultured Redfish and Cultured Speckled Sea Trout.

An aquaculturist shall maintain at each premises or on each vehicle a statement that identifies:

(1) the number and species of cultured redfish and speckled sea trout present;

(2) the name of the owner;

(3) the location and license number of the private facility on which the fish were raised; and

(4) the destination of the cargo.

§16.2. License Application.

The department may issue an aquaculture license or a fish farm vehicle license on submission of a completed application and the license fee. Each license shall be on a form provided by the department.

§16.3. Fees.

Fee for a license under this chapter is $100.

§16.4. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated. § 2001.021-.038 (Vernon 1996) or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 26, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
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Chapter 17. Marketing and Development Division

TAP, Taste of Texas, Vintage Texas, [and] Texas Grown **, and Naturally Texas** Promotional Mark

4 TAC §§17.51-17.56

The Texas Department of Agriculture (the department) proposes amendments to §§17.51-17.56, concerning promotional marks. The amendments are proposed to clarify existing rules, streamline the program rules and ensure consistency among the department's promotional marketing programs.

Diane B. Smith, assistant commissioner for marketing and agribusiness development, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Smith also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be having clearer, more workable rules for the department's promotional marketing programs. For the first five-year period the amendments are in effect, there will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Diane B. Smith, Assistant Commissioner for Marketing and Agribusiness Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code, §12.0175, which provides that the department may set by rule and collect a fee for participation in a program to promote Texas grown product or products made from ingredients grown in Texas; and the Texas Government Code, §2001.004, which provides for the department to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Texas Agriculture Code, Chapter 12 is affected by this proposal.

§17.51. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

[Act –Texas Agricultural Product Act, Texas Agriculture Code, Chapter 12,§12.017 (1981).]

Natural fibers - Fibers which have been produced from crops or shorn from livestock, and which are used in textiles, apparel, and other goods. The term "natural fibers" also includes leather made from the hides of animals.

Producer - Any person who produces products grown in the State of Texas or made from ingredients grown in the State of Texas.

Naturally Texas mark - A mark bearing the icons (or symbols) representative of leather, wool, mohair, and cotton and bearing the words "Naturally TEXAS". Such mark being registered with the Secretary of State's office by the department.

Figure: 1 TAC §17.51

*§17.52. Application for Registration To Use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** Promotional Mark.*

(a) No person shall use, employ, adopt, or utilize the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **or Naturally Texas** promotional mark, unless prior application for registration has been made to the department and permission to make such use, employment, adoption, or utilization has been granted.

(b) Unless permission is otherwise granted by the department:

(1)-(3) (No change.)

(4) the Texas Grown promotional mark may only be utilized by Texas Grown program members. The Texas Grown program is a program established by the department to promote Texas-grown nursery **,** [and] floral **, and forestry** products.

(5) The Naturally Texas promotional mark may only be utilized by Naturally Texas program members. The Naturally Texas program is a program established by the department to promote leather, textile, or apparel products approved by the commissioner as being:

(A) composed of at least 60% natural fibers derived from crops or livestock grown or raised within the State of Texas, the identity of the fibers having been preserved throughout processing so as to be verifiable by satisfactory documentation as having originated in Texas; or

(B) composed of at least 60% natural fibers, regardless of where grown or raised, which have been processed into leather, textile, or apparel products within the State of Texas in a manner which substantially changes their form, and, if composed of natural fibers derived from crops or livestock grown or raised outside the State of Texas, the natural fibers must be of a type commercially produced within the State of Texas.

(c) Applications submitted under this section shall be made in writing on a form prescribed by the department **. Application forms may be obtained by contacting the Texas Department of Agriculture Marketing and Agribusiness Development Division at P. O Box 12847, Austin, Texas 78711, phone (512) 463- 7624.** [and shall contain:]

[(1) the name and address of the applicant;

[(2) a description of the type of business conducted by the applicant;

[(3) the brand name of the product for which application is made;

[(4) the commodity or commodities from which the product is made;

[(5) a statement of the primary source of supply and geographic origin of the product and, of applicable, the commodity or commodities from which it is made;

[(6) if processed, a statement of where the product is processed;

[(7) a statement of where the product is to be packaged;

[(8) the state(s) where the product is to be marketed;

[(9) a statement of how the TAP, Taste of Texas, Vintage Texas, Texas Grown or Naturally Texas promotional mark is to be employed, including a sample of the proposed usage; and

[(10) the signature and title of applicant or applicant's agent submitting the application.]

[(d) A separate application shall be submitted for each product and/or brand name for which registration to use the TAP, Taste of Texas, Vintage Texas, or Texas Grown promotional mark is sought.]

(d)[(e)] Applications shall be submitted to the assistant commissioner for Marketing and Agribusiness Development, Texas Department of Agriculture **, P. O. Box 12847, Austin, Texas, 78711** .

(e)[(f)] If approved, applicants **who are producers** shall remit the required registration fee within 30 days of notification of approval. **Pursuant to the Texas Agriculture Code Annotated, §12.0175, applicants who are not producers shall not be required to pay a registration fee.**

(f)[(g)] Upon receipt of the registration fee **(if required)**, the department shall mail to the registrant a certificate of registration, which shall expire on January 31 of the year of issuance. The department shall also enclose copies of the mark, suitable for reproduction. If the certificate is for less than one full year, registration fees will be assessed on a pro rata basis.

(g)[(h)] Other than the use of the promotional mark, no registrant shall use any statement of affiliation or endorsement by the State of Texas or the department in the selling, advertising, marketing, packaging, or other commercial handling of TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** products.

(h)[(i)] Registrants shall indemnify and hold harmless the commissioner, the State of Texas, and the department for any claims, losses, or damages arising out of or in connection with that person's advertising, marketing, packaging, manufacture, or other commercial handling of TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** products.

(i)[(j)] Any permission under the certificate of registration granted to a registrant to use the mark shall be nonexclusive and nontransferable for the products listed in the application.

(j)[(k)] Registrants shall do nothing inconsistent with the ownership of the promotional mark in the department, and all use of the mark by any registrant shall inure to the benefit of and be on behalf of the department. Further the registrants shall not have any right, title, or interest in the promotion mark, other than the right to use the mark in accordance with the certificate of registration. Registrants must agree not to attack the title of the department to the mark, or attack the validity of the certificate of registration or the permission granted by the department.

(k)[(l)] The nature and quality of the goods sold by registrants in connection with the mark shall conform to any standards which may be set from time to time by the department. Registrants shall cooperate with the commissioner by permitting reasonable inspection of the registrant's operation and supplying the commissioner with specimens of use of the mark upon request.

(l)[(m)] Registrants shall comply with all applicable laws and regulations and obtain all appropriate governmental approval pertaining to the selling, advertising, marketing, packaging, manufacturing, or other commercial handling of the products covered by the certification of registration.

(m)[(n)] Registrants shall use the mark only in the form and manner, and with appropriate legends, as prescribed from time to time by the commissioner.

(n)[(o)] The department shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the TAP, Taste of Texas, Vintage Texas, or Texas Grown promotional marks.

§17.53. Action on Application.

(a) The assistant commissioner for Marketing and Agribusiness Development, Texas Department of Agriculture, within 30 days of receipt of an application for registration to use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** promotional mark, shall make an initial determination of whether such registration permission shall be granted or denied, and forthwith notify the applicant in writing of his decision setting forth in detail the reasons for such grant or denial.

(b) If the applicant wishes to contest such initial determination, notice of protest shall be filed by the applicant with the commissioner within 15 days of receipt by the applicant of notice of such initial determination. The date of notification is the date the notice was mailed by first class mail. Should notice of protest be timely filed, the applicant's request shall be administered as a contested case as provided for the Administrative Procedure [and Texas Register] Act, Texas **Government Code, Chapter 2001** [Civil Statues, Article 6252-13a], and Chapter 1 of this title (relating to General Practice and Procedure).

(c) (No change.)

*§17.54. **Denial of Application to** Use [of] the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** Promotional Mark.*

An application for registration to use the TAP. Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** promotional mark may be denied if:

(1) application is not made in compliance with §17.52 of this title (relating to Application for Permission To Use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** Promotional Mark);

(2)-(3) (No change.)

(4) the applicant has misused the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** promotional mark prior to the date of application.

*§17.55. Registration of Those Entitled To Use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** Promotional Mark.*

(a) The [assistant] commissioner [for Marketing and Agribusiness Development, Texas Department of Agriculture,] shall enroll in a register the names of all persons granted permission under these sections to use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** promotional mark. The register shall be available for public inspection during normal business hours in the offices of the Texas Department of Agriculture **, 1700 North Congress Avenue,** in Austin.

(b) Procedure for annual renewal of registration of persons authorized to use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **or Naturally Texas** promotional mark.

(1) Between January 1 and January 31, annually, the **department** [assistant commissioner for Marketing and Agribusiness Development, Texas Department of Agriculture.] shall mail **to** each person previously registered to use the TAP, Taste of Texas, Vintage Texas, Texas Grown**or Naturally Texas** promotional mark a statement setting forth the amount due as an annual registration fee **for producers. Nonproducers shall be required to verify that they remain exempt from payment of registration fees**.

(2) All payments are due within 30 days of the receipt of the billing **statement**.

(3) Within 30 days of receipt **by the department** of the [required] renewal statement, together with the annual registration fee **(if required)**, the department will mail to the registrant a renewal certificate **of registration** [,which shall be good for a period of one year or until the next expiration date, whichever comes first].

(4) (No change.)

(c) **Annual registration** [Registration] fees for use of the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** promotional emblem shall be paid to the department in accordance with the following schedule:

(1)-(3) (No change.)

(4) Vintage Texas promotional mark - $25 **;** [.]

(5) Naturally Texas promotional mark - $50.

*§17.56. Termination of Registration To Use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** Promotional Mark.*

(a) Registration to use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown**, or Naturally Texas** promotional mark may be revoked at any time if the mark is misused.

(b) Misuse of the TAP, Taste of Texas, Vintage Texas, Texas Grown **or Naturally Texas** promotional mark includes **, but is not limited to**:

(1)-(3) (No change.)

(c) Proceedings for the revocation of registration to use the TAP, Taste of Texas, Vintage Texas, [or] Texas Grown **, or Naturally Texas** promotional mark shall be conducted in the manner provided for contested cases by the Administrative Procedure [and Texas Register] Act, Texas **Government Code [Civil Statutes, Article 6252-13a], and Chapter 1 of this title (relating to General Practice and Procedure).**

(d) A proceeding for revocation of registration to use the TAP, Taste of Texas, Vintage Texas, Texas Grown **or Naturally Texas** promotional mark shall not preclude the commissioner from pursuing any other remedies, including, where applicable, the penal and injunctive remedies provided **for by law** [in the Act, §2 and §3].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 28, 1996.

TRD-9609327
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 463-7583

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Standards for "NATURALLY TEXAS" Products

4 TAC §§17.80-17.87

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department), proposes the repeal of §§17.80-17.87, concerning standards for "NATURALLY TEXAS" products. The repeals are proposed to allow the department to streamline rules relating its promotional marketing programs by incorporating the standards for "NATURALLY TEXAS" products into rules for other programs.

Diane B. Smith, assistant commissioner for marketing and agribusiness development, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Smith also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to have clearer, more workable rules for the department's promotional marketing programs. For the first five-year period the repeals are in effect, there will be no effect on small or large businesses. There is no anticipated economic cost to person who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Diane B. Smith, Assistant Commissioner for Marketing and Agribusiness Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed repeals in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code; and the Texas Government Code, §2001.004, which provides for the department to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Texas Agriculture Code, Chapter 12 is affected by the proposed repeals.

§17.80. Definitions.

§17.81. Requirements for Use of the "NATURALLY TEXAS" Mark.

§17.82. Action on Application.

§17.83. Use of the "NATURALLY TEXAS" Mark.

§17.84. Registration of Those Entitled To Use the "NATURALLY TEXAS" Mark.

§17.85. Procedure for Annual Registration of Persons Authorized To Use the "NATURALLY TEXAS" Mark.

§17.86. Registration Fee.

§17.87. Termination of Permission To Use the "NATURALLY TEXAS" Mark.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Miscellaneous Provisions

4 TAC §17.200

The Texas Department of Agriculture (the department) proposes an amendment to §17.200, concerning expiration provision. The amendment is proposed to provide a future date by which the department must review and amend, repeal or reaffirm the sections found in Chapter 17. The amendment changes the expiration date for Chapter 17 from August 31, 1996, to August 31, 2000.

Diane B. Smith, assistant commissioner for marketing and agribusiness development, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Smith also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be a continuing process by the department to clarify and streamline its rules. For the first five-year period the amendment is in effect, there will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diane B. Smith, Assistant Commissioner for Marketing and Agribusiness Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, §12.016 , which provides the Texas Department of Agriculture with the authority to adopt rules necessary for administration of the Code.

The Texas Agriculture Code, Chapter 12 is affected by this proposed amendment.

§17.200. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, **2000** [1996].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Chapter 19. Seed Division

4 TAC §§19.1-19.14

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§19.1-19.14, concerning administration of the Texas Seed Law, the Texas Agriculture Code, Chapter 61. The regulations are being repealed and relocated in Chapter 9 of this title as part of the department's reorganization of it's regulatory program rules.

Charles Leamons, director for seed quality, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government.

Mr. Leamons also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be to eliminate unnecessary regulations that burden the regulated industries. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Charles Leamons, Director for Seed Quality, Texas Department of Agriculture, P. O. Box 629, Giddings, Texas 78942 and must be received no later than 30 days from the date of the publication in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, §61.002, which providess the Texas Department of Agriculture with the authority to adopt rules necessary for the efficient enforcement of the Chapter 61 and to establish standards of genetic purity and identity.

The code affected by this proposal is the Texas Agriculture Code, Chapter 61.

§19.1. Definitions.
§19.2. Labeling of Hybrid Seed.
§19.3. Noxious Weed Seeds.
§19.4. Service Testing.
§19.5. Labeling of Agricultural Seed.
§19.6. Labeling of Vegetable Seed.
§19.7. Labeling of Treated Seed.
§19.8. Hermetically Sealed Containers.
§19.9. Inspection Fees on Agricultural Seed.
§19.10. Vegetable Seed License.
§19.11. Special Provisions For Labeling of Vegetable Seed.
§19.12. Seed Testing Procedures and Tolerances.
§19.13. Seed Sampling Procedures.
§19.14. Expiration Provision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 1, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Chapter 9. Quarantines

Subchapter A. General Quarantine Provisions

4 TAC §§19.1-19.8

The Texas Department of Agriculture (the department) proposes new §§19.1-19.8, concerning general quarantine provisions. These sections are being relocated from Chapter 5 of this title as part of department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.1 to provide definitions for terms used in these regulations; §19.2 to provide guidelines for issuance of inspection certificates; §19.3 to provide information on inspection fees; §19.4 to provide information on certificate tag or stamp fees; §19.5 to provide information on phytosanitary growing season inspection; §19.6 to provide information on markings and labeling; §19.7 to provide information on violations and penalties; and §19.8 to establish an expiration provision.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §§71.001, 71.002, and 71.003, which providess the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests;

the Code, §71.005, which authorizes the collection of inspection fees for movement of plants into or out of a quarantined area; the Code, §71.114, which authorizes the collection of inspection fees for phytosanitary certification of vegetable plants; and the Code, §12.021, which authorizes the department to collect an inspection fee for the issuance of a phytosanitary certificate.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code and the Texas Administrative Code, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Compliance Agreement - A written signed agreement in which a person engaged in growing, distributing, or moving quarantined articles agrees to comply with conditions specified in the agreement concerning the basis upon which a certificate or permit may be issued for movement of quarantined articles.

Distribute - Offer for sale or lease, hold for sale or lease, sell, lease, barter, offer to buy, buy, offer to supply, or supply.

Free Area - An area not quarantined for a pest or disease.

Host - Any plant or plant product designated in the quarantine upon or in which the quarantined pest completes its life cycle or is dependent for completion of any portion of its life cycle.

Infested - Officially determined to be contaminated by a pest using methods prescribed by the department.

Move - To ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.

Permit - In addition to its ordinary meaning, a permit shall include any authorized state or federal quarantine compliance stamp, limited permit, or trip ticket.

Pest - All living stages of the insect, disease, or other pest organism of plants or plant products against which the quarantine is directed.

Phytosanitary Certificate - A document issued by the department regarding the pest condition of plants, parts of plants or plant products required for movement within this state or by other states or foreign countries for such products exported from this state.

Phytosanitary Growing Season Inspection Certificate - A document issued by the department regarding the pest condition of field grown crops.

Quarantined Articles - Any article of any character as described in the quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.

§19.2. Inspection Certificates.

(a) The department may perform a quarantine inspection for quarantined articles, including any plants, vegetables, other agricultural products, or equipment that is a host or carrier of a pest or disease.

(b) An inspection certificate may be issued if the quarantined articles:

(1) have been treated to eliminate infestations; and

(2) have been inspected and are free of insect pests and diseases; and

(3) will not result in the spread of the quarantined pest.

(c) The inspection certificate is valid for a period of 14 days from the date it was issued.

(d) Subject to the provisions of this chapter, all shipments of plant material originating outside of the state must be accompanied by a certificate of inspection from the origin state's department of agriculture stating that the plants are free of insect pests and plant diseases.

§19.3. Inspection Fees.

(a) The department shall collect an inspection fee of $25 for the issuance of a phytosanitary certificate. Fields designated for genetic identity by the department are exempt from the fee.

(b) The department shall collect the following inspection fee for each acre of field grown vegetable plants over 5 acres for the issuance of a vegetable certificate:

(1) for the first 10 acres inspected in a field, $5.00 for each acre over 5 acres; and

(2) $1.00 for each additional acre inspected.

§19.4. Certificate Tag or Stamp Fee.

In addition to an inspection fee, the department shall collect a fee of one cent per certificate tag or stamp issued for the certification of sweet potatoes.

§19.5. Phytosanitary Growing Season Inspection.

(a) The department may perform a growing season inspection and issue a phytosanitary growing season inspection certificate, upon request.

(b) An application for a growing season inspection accompanied by a field location map shall be submitted to the department no later than 40 days after planting. The application can be obtained from the department. Failure to submit the application prior to the deadline may result in denial of the application.

§19.6. Markings And Labeling.

Each shipment of plants and plant products moved within the state shall have legibly marked upon it in a conspicuous manner and place all of the following:

(1) the name and address of the shipper;

(2) the name of the person to whom the shipment is forwarded or shipped or the name of his agent;

(3) the name of the country, state, or territory where the contents were grown; and

(4) a statement of its contents.

§19.7. Violations and Penalties.

(a) In addition to the penalties set out in Texas Agricultural Code, the following violations are subject to civil and criminal penalties:

(1) using an invalid certificate; and

(2) falsifying an application.

(b) The department may revoke a certificate for a violation of these rules in addition to any other remedy available to the department.

§19.8. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated, §§2001.021 - .038 (Vernon 1996) or specific reactivation by the department, all sections in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 1, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Subchapter B. Burrowing Nematode Quarantine

4 TAC §§19.20-19.23

The Texas Department of Agriculture (the department) proposes new §§19.20-19.23, concerning the burrowing nematode quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.20 to establish quarantined pests; §19.21 to establish quarantined areas; §19.22 to establish quarantined articles; and §19.23 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.20. Quarantined Pest.

The quarantined pest is the Burrowing Nematode, *Radopholus similis*.

§19.21. Quarantined Areas.

The quarantined areas are the states of Florida, Hawaii, and Louisiana and the Commonwealth of Puerto Rico.

§19.22. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) All plants and plant parts with roots, all parts of plants produced below the ground or soil level, and all soil and potting media are quarantined.

§19.23. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Plants produced from seed, or propagating plant parts determined to be free from Burrowing Nematode and have been grown above ground in sterilized soil or other suitable material prepared or treated and protected from nematode infestation until shipped are exempted from the provisions of this subchapter.

(c) Exceptions. Shipments from quarantined areas may enter Texas if each package or bundle is accompanied by a special tag issued by an authorized representative of the state or commonwealth of origin that:

(1) specifies the state or commonwealth of origin; and

(2) certifies that the quarantine articles came from a nursery which has been inspected within the preceding year and found to be free from the Burrowing Nematode.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Subchapter C. Camellie Flower Blight Quarantine

4 TAC §§19.30-19.33

The Texas Department of Agriculture (the department) proposes new §§19.30-19.33, concerning the camellia flower blight quarantine. These sections are being relocated from Chapter

5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.30 to establish quarantined pests; §19.31 to establish quarantined areas; §19.32 to establish quarantined articles; and §19.33 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.30. Quarantined Pest.

The quarantined pest is the disease Camellia Flower Blight, *Sclerotinia camellia*.

§19.31. Quarantined Areas.

The quarantined areas are all areas outside the State of Texas.

§19.32.. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) Camellia plants that are potted, or balled with soil on roots; Camellia flower buds showing color; open Camellia flowers; or cut Camellia flowers are quarantined.

§19.33. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into Texas, except as provided in subsection (b) of this section.

(b) Exceptions. Bare rooted camellia plants with buds showing no trace of color may enter the state of Texas provided a certificate issued by an authorized inspector of the state of origin accompanies each shipment stating that no color is showing in the buds of the plant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
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Subchapter D. Caribbean Fruit Fly Quarantine

4 TAC §§19.40-19.43

The Texas Department of Agriculture (the department) proposes new §§19.40-19.43, concerning the carribbean fruit fly quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.40 to establish quarantined pests; §19.41 to establish quarantined areas; §19.42 to establish quarantined articles; and §19.43 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.40. Quarantined Pest.

The quarantined pest is the Caribbean Fruit Fly *Anastrepha suspensa* (Loew) in any living stage of development.

§19.41. Quarantined Areas.

The quarantined areas are the Commonwealth of Puerto Rico, the State of Florida, and any other area infested with Caribbean fruit fly.

§19.42. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) The fruit or berries of all of the following plants originating from the quarantined area are quarantined: COMMON NAMES - BOTANICAL NAME: Akee *Blighia sapida* Allspice *Pimenta dioica* Apple *Malus sylvestris* Avocado *Persea americana* Barbados cherry *Malpighia glabra* Bell pepper *Capsicum frutescens* Blackberry *Rubus hybrid* Box orange *Severinia buxifolia* Cattley guava *Psidium cattleianum* Calamondin *Citrus mitis* Capulin *Muntingia calabura* Carambola *Averrhoa carambola* Ceylon gooseberry *Dovyalis hebecarpa* Cherry of the Rio Grande *Eugenia aggregata* Cocoplum *Chrysolbalanus icaco* Common guava *Psidium guajava* Costa Rican guava *Psidium freidrichsthalianum* Egg fruit *Pouteria campechiana* Fig *Ficus carica* Governor's plum *Flacourtia indica* Grapefruit *Citrus paradisi* Grumichama *Eugenia brasiliensis* Guiana plum *Drypetes lateriflora* Imbe *Garcinia livingstonei* Jaboticaba *Myrciaria cauliflora* Jambolan plum *Syzygium cumini* Japanese pear *Pyrus pyrifolia* Japanese persimmon *Diospyros kaki* Kei apple *Dovyalis caffra* Kieffer pear *Pyrus pyrifolia x Pyrus communis* Kumquat *Fortunella crassifolia* Kumquat (oval) *Fortunella margarita* Lime *Citrus aurantifolia* Lime berry *Tripasia trifolia* Limequat *Citrus aurantifolia x Fortunella japonica* Loquat *Eriobotrya japonica* Lychee *Litchi chinensis* Mango *Mangifera indica* Miracle fruit *Synsepalum dulcificum* Natal plum *Carissa grandiflora* Nectarine *Prunus persica "Nectarina"* Orange jasmine *Murraya paniculata* Orangequat *Citrus nobilis "unshiu" x Fortunella*sp. Otaheite apple *Spondias cytherea* Papaya *Carica papaya* Peach *Prunus persica* Pear *Pyrus communis* Pitomba *Eugenia luschnathiana* Pomegranate *Punica granatum* Pond apple *Annona glabra* Rangpur lime *Citrus limonia* Rose apple *Syzygium jambos* Sapodilla *Achras zapota* Sour orange *Citrus aurantium* Sugar apple *Annona squamosa* Surinam cherry *Eugenia uniflora* Sweet lemon *Citrus limetta* Sweet orange *Citrus sinensis* Tangelo *Citrus paradisi x Citrus reticulata* Tangerine *Citrus reticulata* Temple orange *Citrus sinensis x Citrus reticulata* Tomato *Lycopersicon osculentum* Tropical almond *Terminalia catappa* Velvet apple *Diospyros discolor* Wampi *Clausena lansium* Water apple *Syzygium samarangense* White sapote *Casimiroa edulis* Wild balsam apple *Mormodica charantia* Wild cinnamon *Canella winteriana* Wild dilly *Manilkara bahamensis Annona hybrid Atalantia citriodes Eugenia coronata Eugenia ligustrina Ficus altissima Garcinia tinctoria Mimusops roxburghiana Myrcianthes fragrans Myrciaria glomerata Pseudanamomis umbellulifera Psidium* sp. *Rheedia aristata Terminalia muelleri Trevisia palmata*

(c) Plants listed in subsection (b) of this section, when originating from the quarantined areas, are considered quarantined articles when transported in soil or growing media.

§19.43. Restrictions.

(a) General. Quarantined articles are prohibited entry into Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Lime fruit which shows no yellow coloring is exempt from these rules.

(c) Exceptions.

(1) Quarantined articles are admissible into Texas from the area under quarantine provided each lot or shipment is accompanied by a certificate issued by an authorized representative of the origin state's or commonwealth's department of agriculture or the United States Department of Agriculture affirming that the lot or shipment was treated for the Caribbean Fruit Fly under their supervision in a manner approved by the department and was not exposed to reinfestation prior to shipment.

(2) Quarantined articles are admissible into Texas from Florida provided each lot is accompanied by a certificate issued by the Florida Department of Agriculture and Consumer Services stating that the shipment meets the conditions established in the protocol for the exportation of fresh fruits to Japan.

(3) Special permits. If the department determines that there is little or no danger of infestation by the movement of a quarantined article, a special permit may be issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter E. Date Palm Lethal Decline Quarantine

4 TAC §§19.50-19.53

The Texas Department of Agriculture (the department) proposes new §§19.50-19.53, concerning the date palm lethal decline quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.50 to establish quarantined pests; §19.51 to establish quarantined areas; §19.52 to establish quarantined articles; and §19.53 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.50. Quarantined Pest.

The quarantined pest is the disease, Date Palm Lethal Decline.

§19.51. Quarantined Areas.

The quarantined areas are Cameron, Hidalgo, and Willacy counties of Texas.

§19.52. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) All parts of the Canary Island date palm, *Phoenix canariensis* and all parts of the date palm, *Phoenix dactylifera* are quarantined.

(c) Tools used in pruning and handling quarantined articles are quarantined.

§19.53. Restrictions.

(a) General. Movement of quarantined articles from the quarantined areas of Texas are prohibited, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Palm seed are exempt from the provisions of this subchapter.

(c) Exception.

(1) Shipments of quarantined palms from quarantined areas may be allowed movement into the free areas of Texas under special permit from the department under the following conditions.

(A) Quarantined palms located within one mile of a known infected tree may:

(i) not move from the quarantined area for a period of six months following removal of an infected tree; or

(ii) be allowed to move after six months if no other infected trees are found within a mile radius and the conditions specified in subparagraphs (B) or (C) of this paragraph are met.

(B) Quarantined palms located more than one mile and less than two miles from known infected trees must:

(i) be inspected within 24 hours prior to shipment with no symptoms of lethal decline apparent; and

(ii) have been treated, as approved by the department, for a period of three months prior to shipment; and

(iii) must be treated on the day of movement.

(C) Quarantined palms located more than two miles from known infected trees must:

(i) be inspected within 24 hours prior to shipment with no symptoms of lethal decline apparent; and

(ii) must be treated on the day of movement.

(2) Tools used in pruning and handling of host plants may be allowed movement from the quarantined area if disinfected with one part liquid household bleach (sodium hypochlorite) to four parts water or some other suitable disinfectant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter F. Lethal Yellowing Quarantine

4 TAC §§19.60-19.63

The Texas Department of Agriculture (the department) proposes new §§19.60-19.63, concerning the lethal yellowing quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.60 to establish quarantined pests; §19.61 to establish quarantined areas; §19.62 to establish quarantined articles; and §19.63 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provides the

Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.60. Quarantined Pest.

The quarantined pest is the disease, Lethal Yellowing.

§19.61. Quarantined Areas.

The quarantined areas are the entire state of Florida, the Commonwealth of Puerto Rico, and the Territory of Guam.

§19.62. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) The following articles are quarantined: COMMON NAME - BOTANICAL NAME: Sand palm *Allagoptera arenaria* Ruffle palm *Aiphanes lindeniana* Engle's sugar palm *Arenga engleri becc.* Palmyra palm *Borrassus labellifer* Cluster fish-tail palm *Caryota mitis* Solitary fish-tail palm *Caryota rumphiana* Cabada palm *Chrysalidocarpus cabadae* Coconut palm *Cocos nucifera* Buri palm, Gebang palm *Corypha utan* Talipot palm *Corypha elata* Hurricane or Princess palm *Dictyosperma album* Puerto Rican Gaussia *Gaussia attenuata* Belmore sentry palm *Howea belmoreana* Spindle palm *Hyophorbe verschaffeltii* Latan palm *Latania* sp. Chinese fan palm *Livistona chinensis* Javanese fan palm *Livistona rotundifolia* Mazari palm *Nannorrhops ritchiana* Triangle palm *Neodypsis decaryi* Screwpine *Pandanus utilus* Canary Island date palm *Phoenix canariensis* Date palm *Phoenix dactylifera* Senegal date palm *Phoenix reclinata* Pygmy date palm *Phoenix roebelenii* Sylvester date palm *Phoenix sylvestris* Hawaiian loulu palm *Pritchardia affinis* Remota loulu palm *Pritchardia remota* Fiji Island fan palm *Pritchardia pacifica* Thurston's loulu palm *Pritchardia thurstonii* Hildebrandt's palm *Ravenea hildebrandtii* Arikury palm *Syagrus schizophylla* Chinese windmill palm *Trachycarpus fortunei* Christman palm *Veitchia arecina* Manilla palm-Christmas palm *Veitchia merrillii* Christmas palm *Veitchia montgomeryana Corypha taliera*

(c) Any plant determined to be a host of this disease is quarantined.

§19.63. Restrictions.

(a) General. Quarantined articles are prohibited entry into Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Palm seed are exempt from the provisions of this subchapter.

(c) Exceptions. The department may allow shipments of quarantined articles under special permit as new methods of treatment are approved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter G. European Brown Garden Snail Quarantine

4 TAC §§19.70-19.73

The Texas Department of Agriculture (the department) proposes new §§19.70-19.73, concerning the European brown garden snail quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.70 to establish quarantined pests; §19.71 to establish quarantined areas; §19.72 to establish quarantined articles; and §19.73 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.70. Quarantined Pest.

The quarantined pest is the European Brown Garden Snail, *Helix aspersa* (Muller).

§19.71. Quarantined Areas.

The quarantined areas are Arizona and California.

§19.72. Quarantined Articles.

The quarantined articles are horticultural and nursery stock with roots in soil and growing media.

§19.73. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Cut greens, cut flowers, and soil free plants, including bare root plants, plant crowns, roots for propagation, bulbs, corms, tubers, and rhizomes of plants washed free of adherent soil are exempted from the provisions of this subchapter.

(c) Exceptions. Quarantined articles may enter Texas if:

(1) accompanied by a certificate, issued by and bearing the signature of an authorized representative of the origin state's department of agriculture, certifying that such quarantined articles were inspected and found to be apparently free of European Brown Garden Snail; or

(2) accompanied by a certificate authorized by a compliance agreement which:

(A) is on file with the Texas Department of Agriculture;

(B) is issued by and under the signature of an authorized representative of the origin state's department of agriculture;

(C) certifies that such shipper is currently certified to have a nursery, or growing area within a nursery, apparently free of infestation of the European Brown Garden Snail; and

(D) requires inspection by an authorized representative of the origin state's department of agriculture on at least a semiannual basis.

(3) accompanied by a certificate, issued by and under the signature of an authorized representative of the origin state's department of agriculture, certifying that such quarantined articles were treated with an approved molluscicide at the recommended rate; or

(4) accompanied by a certificate, issued by and under the signature of an authorized representative of the origin state's department of agriculture, certifying that the pest is not known to occur in the nursery or growing area from which the shipment originated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter H. Gypsy Moth Quarantine

4 TAC §19.80, §19.81

The Texas Department of Agriculture (the department) proposes new §19.80 and §19.81, concerning a gypsy moth quarantine. The new sections are proposed to prevent the introduction and spread of the gypsy moth in Texas. The department is proposing new §19.80 to establish quarantined pests; and §19.81 to establish the adoption of the federal gypsy moth quarantine.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be the prevention against introduction and spread of gypsy moths in Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.80. Quarantined Pest.

The quarantined pest is the gypsy moth, *Lymantria dispar* (Linnaeus).

§19.81. Adoption of Federal Quarantine.

The department hereby adopts by reference the Federal Gypsy Moth Quarantine as adopted by the United States Department of Agriculture, 7 Code of Federal Regulations, Part 301.45 through 301.45-12. A copy of the regulation may be obtained at the Texas Department of Agriculture, P. O. Box 12847, Austin, Texas, 78711.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter I. Pine Shoot Beetle Quarantine

4 TAC §19.90, §19.91

The Texas Department of Agriculture (the department) proposes new §19.90 and §19.91, concerning the pine shoot beetle quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for

the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.90 to establish quarantined pests; and §19.91 to establish the adoption of the federal quarantine.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.90. Quarantined Pest.

The quarantined pest is the pine shoot beetle, *Tomicus piniperda* (Linnaeus).

§19.91. Adoption of Federal Quarantine.

The department hereby adopts by reference the Federal Pine Shoot Beetle Quarantine as adopted by the United States Department of Agriculture, 7 Code of Federal Regulations, Part 301.50 through 301.50-10. A copy of the regulation may be obtained at the Texas Department of Agriculture, P. O. Box 12847, Austin, Texas, 78711.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter J. Red Imported Fire Ant Quarantine

4 TAC §§19.100-19.103

The Texas Department of Agriculture (the department) proposes new §§19.100-19.103, concerning the red imported fire ant quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.100 to establish quarantined pests; §19.101 to establish quarantined areas; §19.102 to establish quarantined articles; and §19.103 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and § 71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.100. Quarantined Pest.

The quarantined pest is the Red Imported Fire Ant, *Solenopsis invicta* (Buren).

§19.101. Quarantined Areas.

(a) The department hereby adopts by reference as quarantined areas those counties in Texas, or portions thereof, listed as regulated areas in the most current federal imported fire ant quarantine as adopted by the United States Department of Agriculture, and found at 7 Code of Federal Regulations §301.81- 3. A copy of the regulation may be obtained at the Texas Department of Agriculture, P. O. Box 12847, Austin, Texas, 78711.

(b) In addition to the areas described in subsection (a) of this section, Brooks, Brown, Cameron, Delta, Dimmit, Duval, Ector, Hidalgo, Jack, Jones, Kenedy, Kimble, Kinney, Lamar, La Salle, Mason, Maverick, McCulloch, Midland, Montague, Palo Pinto, San Saba, Stephens, Val Verde, Webb, Willacy, Young, and Zavala counties in Texas are quarantined areas.

§19.102. Quarantined Articles.

(a) Quarantined articles are:

(1) the red imported fire ant in any living state of development;

(2) soil, compost, decomposed manure, humus, muck, and peat, separately or with other things;

(3) plants with roots with soil attached;

(4) grass sod;

(5) baled hay and baled straw stored in direct contact with the ground;

(6) logs, pulpwood, and stumpwood; and

(7) used mechanized soil-moving equipment.

(b) Any other products, articles, or means of conveyance of any character whatsoever, not covered by subsection (a) of this section, are quarantined articles when it is determined that they present a hazard of spread of red imported fire ants and the person in possession thereof has been so notified.

§19.103. Restrictions.

(a) General. Quarantined articles from the quarantined area are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. The following quarantined articles are exempt from permit requirements:

(1) soil samples of one pound or less which are packaged so that no soil will be spilled in transit;

(2) soil samples of any size collected and shipped to any United States Army Corps of Engineers soil laboratory;

(3) compost, decomposed manure, humus, and peat, if dehydrated, ground, pulverized, or compressed;

(4) logs and pulpwood; provided, the railroad loading site has been treated;

(5) stumpwood, if free of excessive amounts of soil; provided the railroad loading site has been treated and the stumpwood is consigned to a designated plant; and

(6) used mechanized soil-moving equipment, if free of quarantined articles.

(7) other exemptions may be granted upon departmental review.

(c) Exceptions. Shipments from quarantined areas are allowed entry into or through the free areas under the following conditions.

(1) A phytosanitary certificate or permit must accompany the movement of quarantined articles from any quarantined area into or through any point outside thereof.

(2) Phytosanitary certificates or permits may be issued by an inspector or under the authority of a compliance agreement if the quarantined articles:

(A) have originated in certified imported fire ant free premises in a quarantined area and have not been exposed to infestation while within the quarantined area; or

(B) upon examination, have been found to be free of infestation; or

(C) have been treated to destroy infestation in accordance with approved procedures; or

(D) have been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted.

(3) Phytosanitary certificates or permits shall be securely attached to the outside of the container in which the articles are moved except where the certificate or permit is attached to the shipping document and the quarantined articles are adequately described on the shipping document or on the certificate or permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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Subchapter K. European Corn Borer Quarantine

4 TAC §§19.110-19.113

The Texas Department of Agriculture (the department) proposes new §§19.110-19.113, concerning the European corn borer quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.110 to establish quarantined pests; §19.111 to establish quarantined areas; §19.112 to establish quarantined articles; and §19.113 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.110. Quarantined Pest.

The quarantined pest is the European Corn Borer, *Pyrausta nubilalis* (Hubn).

§19.111. Quarantined Areas.

(a) Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, the District of Columbia are quarantined areas.

(b) The Texas counties of Carson, Dallam, Deaf Smith, Gray, Hansford, Hartley, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, and Sherman are also quarantined areas.

§19.112. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) All unmanufactered forms of corn, broomcorn, sorghums, and sudan grass, plants, and all parts thereof (including seed and shelled grain, and stalks, ears, cobs, and all other parts, fragments, or debris of said plants), beans in the pod, beets, celery, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots), cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems), and gladiolus (except corms without stems) originating from quarantined areas are quarantined.

§19.113. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. The following quarantined articles are exempt from the restrictions of this subchapter.

(1) individual shipments of lots of shelled grain or seed of 100 pounds or less;

(2) quarantined articles comprised of packages less than 10 pounds and free from portion of plants or fragments capable of harboring European Corn Borer; and

(3) quarantined articles with divisions without stems of the previous year's growth, rooted cuttings, seedling plants or cut flowers shipped during the period between November 30th to May 1st.

(c) Exceptions.

(1) A quarantined article may be shipped into a free area in Texas if it is accompanied by a certificate issued by an authorized representative of the origin state's department of agriculture certifying that the article has met one of the following conditions:

(A) the quarantined article was a product of a state not listed as quarantined in this subchapter, and the quarantined article has been maintained to assure no blending or mixing with other quarantined articles produced in or shipped from quarantined areas described in this subchapter, or

(B) the quarantined articles have been screened through a 1/2 inch mesh screen or less, or otherwise processed prior to loading and are free from stalks, cobs, stems or such portions of plants or fragments, or

(C) the quarantined article has been fumigated in a manner prescribed by the department, or

(D) the quarantined article originated from an approved establishment in Texas which has a current compliance agreement with the department.

(2) Unfumigated and unscreened grain may be shipped through the free area of Texas if it is destined to a foreign port through a port elevator operating under the authority of the Federal Grain Inspection Service (FGIS), provided a certificate from the state of origin accompanies each shipment stating:

(A) grain is for export only; and

(B) shipment shall not be diverted to any other Texas point; and

(C) a change in destination to other Texas points is not authorized.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
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Subchapter L. Pecan Weevil Quarantine

4 TAC §§19.120-19.123

The Texas Department of Agriculture (the department) proposes new §§19.120-19.123, concerning a pecan weevil quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.120 to establish quarantined pests; §19.121 to establish quarantined areas; §19.122 to establish quarantined articles; and §19.123 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.120. Quarantined Pest.

The quarantined pest is the Pecan Weevil, *Curculio caryae* (Horn).

§19.121. Quarantined Areas.

The quarantined areas are are:

(1) Eddy and Chaves counties, New Mexico and all other states and districts of the United States except Arizona, California, and the remainder of New Mexico;

(2) all areas in the State of Texas except the counties of El Paso, Hudspeth, Culberson, Jeff Davis, and Presidio.

§19.122. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) All hickory, pecan, and walnut trees and parts thereof, except extracted nut meats, originating from quarantined areas are quarantined.

§19.123. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas listed in this subchapter, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Movement of quarantined articles to a sheller or processing plant for treatment or further processing may be granted upon departmental review.

(c) Exceptions. All quarantined articles must be free of husk and accompanied by a state certificate certifying that the products were treated in the following manner:

(1) dipped in water at a temperature of at least 140 degrees Fahrenheit for 30 seconds. It is not necessary to dip the parts of a tree that will be below ground level; or

(2) held at a temperature of 0 degrees Fahrenheit for a period of 168 consecutive hours or longer after the entire lot has reached the desired temperature; or

(3) alternate treatments may be approved upon departmental review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
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Subchapter M. Sweet Potato Weevil Quarantine

4 TAC §§19.130-19.133

The Texas Department of Agriculture (the department) proposes new §§19.130-19.133, concerning the sweet potato weevil quarantine. These sections are being relocated from Chapter 5 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language in the current regulations, eliminate duplication of quarantine provisions, and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §19.130 to establish quarantined pests; §19.131 to establish quarantined areas; §19.132 to establish quarantined articles; and §19.133 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a reduction in industry confusion concerning regulatory requirements and a facilitation of effective administration of quarantine programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.001 and §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.130. Quarantined Pest.
The quarantine pest is the Sweet Potato Weevil, *Cylas formicarius* (Fab).

§19.131. Quarantined Areas.
The quarantined areas are:

(1) Alabama: Baldwin, Coffed, Covington, Geneva, Houston, and Mobile.

(2) Arkansas: Ouachita County.

(3) Florida: Entire state.

(4) Georgia: Appling, Bacon, Brooks, Bryan, Camden, Chatham, Colquitt, Cook, Decatur, Dougherty, Echols, Grady, Glynn, Liberty, Lowndes, McIntosh, Pierce, Thomas, Ware, and Wayne.

(5) Louisiana: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Calcasieu, Cameron, East Baton Rouge, Evangeline, East Feliciana, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Helena, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, Webster, West Baton Rouge, and West Feliciana.

(6) Mississippi: Adams, Copiah, Covington, Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Lawrence, Lincoln, Marion, Pearl River, Perry, Pike, Simpson, Smith, Stone, and Walthall.

(7) South Carolina: Beaufort, Charleston, and Jasper.

(8) Texas: Anderson, Angelina, Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Brazoria, Brazos, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Chambers, Cherokee, Colorado, Comal, Coryell, DeWitt, Dimmitt, Duval, Edwards, Falls, Fayette, Fort Bend, Freestone, Frio, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleberg, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Live Oak, Madison, Matagorda, Maverick, McMullen, Medina, Milam, Montgomery, Nacogdoches, Newton, Nueces, Orange, Panola, Polk, Real, Refugio, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Starr, Travis, Trinity, Tyler, Uvalde, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala.

§19.132. Quarantined Articles.
(a) The quarantined pest is a quarantined article.

(b) All sweet potato roots or tubers, plants, vines, or parts thereof; any vines or roots of other plants belonging to the genus *Ipomoea*; and any containers or bins used in the transportation of sweet potatoes originating from a quarantined area are quarantined.

§19.133. Restrictions.
(a) General. Quarantined articles are prohibited entry into Texas and shall not be moved from any quarantined area into or within the free area of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exceptions.

(1) Shipments from quarantined areas of other states are allowed entry into quarantined areas of Texas if a permit is obtained from the department and used as follows:

(A) a permit application may be obtained from the Austin headquarters of the department;

(B) applicants must have made bond in the amount of $5,000 to guarantee reimbursements to any purchasers of sweet potatoes shipped into the State of Texas for the purchase price and freight charges thereon, if destroyed or returned to the point of origin by an inspector;

(C) a copy of the permit must be printed on tags, one of which is to be firmly affixed to each container of a shipment, and such tags may be used only by the holder of a permit;

(D) each tag must show the name, street address, and city of the consignee;

(E) sweet potatoes must be shipped from holders of permits, hauled by holders of permits, and such potatoes must have been purchased from a permit holder; and

(F) all shipments of sweet potatoes must be accompanied by a certificate, issued by and bearing the signature of an authorized representative of the origin state's department of agriculture, certifying that such shipment was inspected and found to be free of sweet potato weevil. A copy of this certificate of inspection must be sent to the Austin headquarters of the department the day the certificate is issued.

(2) Subject to the restriction in paragraph (3) of this subsection, a certificate for the movement of quarantined articles from any quarantined area in the State of Texas outside thereof may be issued by a duly authorized inspector upon determination that:

(A) the material certified is apparently free from infestation of the sweet potato weevil; and

(B) the material has been produced, packed, and handled for shipment under such conditions as to eliminate any danger of the spread of weevils.

(3) No certificate shall be issued for the shipment of sweet potatoes from a quarantined area in Texas to:

(A) a sweet potato weevil free area in Texas unless they were produced in a weevil free area and moved under special permit; or

(B) any state which prohibits such entry.

(c) Bedding, Production, and Distribution of Propogative Sweet Potatoes and Slips in Weevil Free Areas.

(1) Only state certified sweet potato plants may be sold or offered for sale in Texas.

(2) No sweet potato vines, plants, or parts thereof shall be planted within one mile of an infestation which has been found within 12 months; except the grower must agree in writing to follow an insecticide treatment program approved by the department.

(3) Location and condition of storage places on infested properties shall be approved by an authorized representative of the department.

(4) All sweet potatoes remaining in storage within one mile of an infestation after February 1 of the year following production must be treated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
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Subchapter N. Karnal Bunt Quarantine

4 TAC §§19.140-19.143

The Texas Department of Agriculture (the department) proposes new §§19.140-19.143, concerning a Karnal bunt quarantine. The new sections are proposed to prevent the spread of Karnal bunt into other areas of Texas. The department is proposing new §19.140 to establish the quarantined pest; §19.141 to establish quarantined areas; §19.142 to establish quarantined articles; and §19.143 to establish restrictions.

David Kostroun, coordinator for plant quality programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be the prevention against spread of Karnal bunt in Texas. The effect on small businesses and to persons who are required to comply with the sections as proposed will be the additional cost to disinfect quarantined articles and to obtain a phytosanitary certificate or permit when moving quarantined articles outside of the quarantined area.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests; and the Code, §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, Subchapter A is affected by this proposal.

§19.140. Quarantined Pest.

The quarantined pest is the disease Karnal bunt, *Tilletia indica*, (Mitra).

§19.141. Quarantined Areas.

The quarantined areas within Texas are El Paso and Hudspeth counties.

§19.142. Quarantined Articles.

Quarantined articles are:

(1) plants, or any plant part, including grain, seed, or straw of the following species: wheat, *Triticum aestivum* ; triticale, *Triticum aestivum X Seale cereals* ; Durum wheat, *Triticum durum*;

(2) soil;

(3) elevator parts and grain storage buildings;

(4) farm implements and equipment used for land preparation, planting, harvesting, chemical application, and processing of wheat, triticale, or durum wheat; and

(5) any other products, articles, or means of conveyance of any character whatsoever, when it is determined by an inspector that they present a hazard of spread of Karnal bunt.

§19.143. Restrictions.

(a) General. Quarantined articles shall not be moved from a quarantined area into a free area except as provided in subsection (c) of this section.

(b) Specific. Quarantined articles shall not be moved from the following areas unless the effected landowner/operator has signed a compliance agreement with the department or the United States Department of Agriculture.
Figure: 4 TAC§19.143(b)

(c) Exceptions. Shipments from quarantined areas are allowed entry into or through the free areas of Texas under the following conditions.

(1) A phytosanitary certificate or permit must accompany the movement of quarantined articles from any quarantined area into or through any point outside thereof.

(2) Phytosanitary certificates or permits may be issued by an inspector or under the authority of a compliance agreement if:

(A) grain is officially sampled at the county of origin and tested by a laboratory approved by the department and found to be free from Karnal bunt. The procedure shall follow all accepted phytosanitary certification standards, and shall occur prior to movement; or

(B) equipment has been properly sanitized using approved treatments established by the United States Department of Agriculture; or

(C) quarantined articles have been treated to eliminate infestation; or

(D) the department has determined that such movement will not result in the spread or increased infestation of Karnal bunt.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel

Texas Department of Agriculture
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Chapter 21. Seed Certification Standards

The State Seed and Plant Board (the board) of the Texas Department of Agriculture (the department) proposes the repeal of §§21.1-21.14, 21.21, 21.31, 21.41, 21.51, 21.61-21.68, 21.81- 21.87, 21.101-21.106, and 21.121-21.123, concerning the administration of the Texas Seed and Plant Certification Act. The regulations are being repealed and relocated in Chapter 10 of this title as part of the department's reorganization of it's regulatory rules.

Charles Leamons, director for seed quality, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government.

Mr. Leamons also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the repeal will be to eliminate unnecessary regulations that burden the regulated industries. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the rules as a result of the repeal.

Comments on the proposal may be submitted to Charles Leamons, Director for Seed Quality, Secretary, State Seed and Plant Board at the Texas Department of Agriculture, P. O. Box 629, Giddings Texas 78942. Comments must be received no later than 30 days from the date of the publication in the *Texas Register*.

4 TAC §§21.1–21.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004 and §62.005, which provide the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62 is affected by the proposal.

§21.1. Purpose of Certification.

§21.2. Eligibility of Varieties.

§21.3. Approval of Applicant under Certification.

§21.4. Definitions.

§21.5. Limitations of Generations.

§21.6. Application for Field Inspection.

§21.7. Handling of Crop Prior to Inspection.

§21.8. Field Inspection.

§21.9. Harvesting, Processing, and Storing.

§21.10. Seed Testing.

§21.11. Labels.

§21.12. Misrepresentation.

§21.13. Interagency Certification.

§21.14. Bulk Sales.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Field Inspection Chart

4 TAC §21.21

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004 and §62.005, which provide the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§21.21. Number and Time of Field Inspections.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Acreage Inspection Fees for Certification

4 TAC §21.31

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004 and §62.005, which provide the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§21.31. Inspection Fees for Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Laboratory Analysis Chart

4 TAC §21.41

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004 and §62.005, which provide the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§21.41. Minimum Amount of Seed Required for Laboratory Analysis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 1, 1996.

TRD-9609363
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of Adoption: August 12, 1996
For further information, please call: (512) 463–7583.

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Genetic Seed Chart

4 TAC §21.51

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004 and §62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§21.51. Genetic Seed Certification Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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Additional Requirements for the Certification of Certain Crops

4 TAC §§21.61–21.68

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004 and §62.005, which provide the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, whidh provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§21.61. Length of Stand Requirements.

§21.62. Restrictions on Number of Varieties Per Farm.

§21.63. Definition of Terms and Other Requirements.

§21.64. Tolerances and Detasseling Requirements for Corn.

§21.65. Bagging Procedures for Grain and Forage Type Sorghum.

§21.66. Requirements and Standards for Hybrid Sorghum Varietal Purity Grow-outs.

§21.67. Requirements and Standards for Sunflower Varietal Purity Grow-outs.

§21.68. Disease Requirements of Peanut Production.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Vegetatively Propagated Pasture Grass and Turf Grass

4 TAC §§21.81–21.87

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004 and §62.005, which provide the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§21.81. Application and Amplification of General Certification Standards.

§21.82. Land Requirements (Rules Covering Land Prior to Planting).

§21.83. Handling the Crop Prior to Inspection.

§21.84. Field Inspection.

§21.85. Field Standards.

§21.86. Stock Handling.

§21.87. Stock Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Texas Department of Agriculture
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Sugar Cane-Vegetatively Propagated

4 TAC §§21.101–21.106

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004and §62.005, which provide the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§21.101. Application and Amplification of General Certification Standards.

§21.102. Land Requirements.

§21.103. Handling the Crop Prior to Inspection.

§21.104. Field Inspection.

§21.105. Field Standards.

§21.106. Stock Handling.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
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Forest Reproductive Material

4 TAC §§21.121–21.123

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code (the Code), §62.004 and §62.005, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity and procedures for certification and adopt rules for the production and handling of certified seed and plants by licensed producers; and, the Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§21.121. Application and Amplification of General Certification Standards.

§21.122. Seed Production.

§21.123. Seedling Production, Certified (Blue Label), and Certified Selected (Green Label).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Chapter 21. Citrus

Subchapter A. Citrus Quarantines

4 TAC §§21.1–21.8

The Texas Department of Agriculture (the department) proposes new §§21.1-21.8, concerning citrus. These new sections are being proposed in order to protect the citrus industry by preventing the artificial spread of dangerous insect pests and plant diseases. The department is proposing new §21.1 to define terms used in the subchapter; quarantined pests, areas, and articles are established in §§21.2-21.5; quarantine restrictions, exemptions, and exceptions are specified in §21.6; §21.7 outlines violations and penalties, and §21.8 creates a new expiration provision.

Leslie McKinnon, coordinator for pest management programs, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. McKinnon also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing this rule will be the increased protection of the citrus industry from the threat of insect pests and diseases and the clarification of regulations governing the movement of restricted articles. The effect on small or large businesses will be restrictions which prohibit the purchase of citrus stock from out-of-state sources. Wholesale citrus nurseries in Texas will benefit from this action through increased sales. Anticipated economic cost to persons who are required to comply with the rule as proposed will be the cost of testing and certifying restricted articles to be free of insect pests and diseases before shipping into the citrus zone.

Comments on the proposal may be submitted to Leslie McKinnon, Coordinator for Pest Management Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of the Code; §71.007, which provides the department with the authority to adopt rules for the protection of agricultural and horticultural interests; the Code, Chapter 71, Subchapter A, which authorizes inspections, quarantines, and control and eradication zones for dangerous insect pests; and the Code, Chapter 73, which provides the department with the authority to regulate citrus pests and establish quarantines.

The code sections that will be affected by the proposal are the Texas Agriculture Code, Chapters 73 and 71.

§21.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code and Texas Administrative Code, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

California citrus clonal protection program-A program established by the California Department of Food and Agriculture and operated within the University of California system to provide a source of disease-free budwood to the citrus industry.

Rootstock-A plant used as the recipient understock in budding or grafting.

§21.2. Quarantined Pests and Diseases.

(a) Diseases. For the purposes of these regulations, the following plant diseases are quarantined: strains of citrus tristeza virus, citrus canker, psorosis, viral leprosis, citrus blight, stubborn, greening, citrus variegated chlorosis and citrus scab.

(b) Insects and mites. For the purposes of these regulations, the quarantined insects and mites injurious to citrus include the following: Brown citrus aphid *Toxoptera citricida* Branch and twig borer *Melalgus confertus* Citrus psilid *Diaphorina citri* Orange spiny whitefly *Aleurocanthus spiniferous* Avocado whitefly *Trialeurodes floridensis* Plumeria whitefly *Paraleurodes perseae* Inconspicuous whitefly *Bemesia inconspicua* Citrus root weevil *Pachnaeus litus* Sugarcane root-stalk *Diaprepes abbreviata* borer weevil Rufous scale *Selenaspidus articulatus* Caribbean black scale *Saissetia neglecta* Citrus snow scale *Unaspis citri* Oystershell scale *Lepidosaphes ulmi* Citrus bud mite *Eriophyes sheldoni* Six-spotted mite *Eotetranychus sexmaculatus* Yuma spider mite *Eotetranychus yumensis* Orange sawyer *Elaphidion inerne* Citrus thrips *Scirtothrips citri*

§21.3. Quarantined Areas.

The quarantined areas are all areas outside of Texas.

§21.4. Citrus Zone.

For the purposes of these regulations, the following counties are considered the citrus zone within Texas: Brooks, Cameron, Hidalgo, Jim Hogg, Kenedy, Starr, Willacy, and Zapata.

§21.5. Quarantined Articles.

Quarantined articles include the quarantined pests; any part of any citrus tree, including budwood, seed, or seedlings; ornamental plants closely related to citrus in the botanical family Rutaceae, subfamily Aurantioideae; and any article carrying or capable of carrying the plant pests or diseases.

§21.6. Restrictions.

(a) General. In addition to any other applicable restrictions imposed by regulations adopted under Chapter 71, Texas Agriculture Code, quarantined articles may not be transported into Texas or into the citrus zone except as outlined in subsection (c) of this section.

(b) Exemptions.

(1) Citrus seed produced in California is exempt from these rules.

(2) Commercial citrus fruit is exempt from these rules.

(c) Exceptions.

(1) Within the state, quarantined articles may be transported into the citrus zone only if certified by the department to be free of all pests listed in this subchapter. Documentation of test results shall be provided to and approved by the department in order to obtain a phytosanitary certificate verifying that the quarantined articles are pest-free. The department shall be notified at least 2 working days prior to shipment to schedule an inspection for a phytosanitary certificate.

(2) Budwood of citrus varieties not existing in Texas may be shipped to Texas from Florida, California, or outside the United States under the following conditions:

(A) before any citrus budwood is allowed to enter Texas, it shall be certified as originating from an area free of citrus blight. It shall also have been tested using methods approved by the department, and such tests shall have produced negative results for citrus tristeza virus, greening, citrus canker, and stubborn disease of citrus. Documentation of negative results of tests described in this section shall be included with the shipment;

(B) budwood shall be assigned to a federal or state agency approved by the department for the purpose of confirmation tests to determine if the budwood is free from all virus and infectious diseases before it is released to the buyer. For confirmation tests, budwood shall be grown on rootstock varieties appropriate for the diagnosis of the diseases listed in this section;

(C) before any citrus budwood will be allowed to enter Texas from outside the continental United States, it shall be cleared through the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Such clearance shall be certified to and approved by the department before the entrance of the budwood shipment into Texas;

(D) in addition to the requirements outlined in paragraph (2), subparagraphs (A) and (B) of this subsection, shipments originating in Florida or California shall include a certificate from the origin state's department of agriculture specifying that the budwood is free of pests and diseases listed in this subchapter. A copy of the certificate shall be sent to and approved by the Texas Department of Agriculture before shipment of the budwood to Texas. However, budwood originating from the California citrus clonal protection program (CCCPP) will be exempt from the requirements in paragraph (2), subparagraphs (A) and (B) of this subsection, but will require a certificate from the CCCPP specifying that the budwood is free of pests and diseases listed in this subchapter instead of the state's certificate; and

(E) for all budwood shipments, a permit from the Texas Department of Agriculture shall be issued and, together with a copy of the certificate(s) required by this section, shall be attached to the shipment.

(3) Citrus seed produced in Florida may be imported into Texas under the following conditions:

(A) a certificate from the Florida Department of Agriculture and Consumer Services shall be provided prior to shipment, verifying that the seed is from registered stock and was harvested in territory in Florida that is free from citrus canker, and that the seed has been treated to eliminate bacterial and fungal pathogens prior to shipment. Treatment procedures shall be approved by the Texas Department of Agriculture; and

(B) a permit from the Texas Department of Agriculture shall be issued and, together with a copy of the certificate required by this section, shall be attached to the shipping container.

§21.7. Violations and Penalties.

(a) In addition to violations that may arise under the act or this chapter, violations listed under Quarantines, General Provisions of this title are applicable to citrus quarantines.

(b) Any violation of these rules may be subject to civil and criminal penalties. In addition, the department may revoke a certificate, and/or assess administrative penalties as prescribed in §12.020 of the Texas Agriculture Code, against any person for a violation of these rules.

§21.8. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated, §§2001.021-2001.038 (Vernon 1996) or specific reactivation by the department, all sections in this chapter shall expire on August 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 1, 1996.

TRD-9609369
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7583.

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Chapter 23. Family Farm and Ranch Security Program

The Texas Department of Agriculture (the department) proposes the repeal of §§23.1-23.6, 23.11-23.13, 23.21-23.29, 23.41- 23.47, 23.61-23.63, 23.71-23.73, 23.81-23.82, and 23.91-23.102, concerning the Family Farm and Ranch Security Program. The repeal is proposed to eliminate unnecessary sections that are non- functional due to the discontinuance of the Family Farm and Ranch Security Program.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kennedy also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the repeal will be elimination of unnecessary regulations. There will be no effect on small

or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

Subchapter A. General Provisions

4 TAC §§23.1–23.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §252.011, which provides the department with the authority to adopt rules for administration of Chapter 252.

The Texas Agriculture Code, Chapter 252 is affected by this proposal.

§23.1. Purpose and Application of Rules.

§23.2. Authority.

§23.3. Definitions.

§23.4. Advisory Council.

§23.5. Administration.

§23.6. Expiration Provision.

Issued in Austin, Texas, on July 1, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Subchapter B. Eligibility

4 TAC §§23.11–23.13

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §252.011, which provides the department with the authority to adopt rules for administration of Chapter 252.

§23.11. Eligible Applicant.

§23.12. Eligible Lenders.

§23.13. Eligible Financial.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7583.

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Subchapter C. Application Procedures

4 TAC §§23.21–23.29

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §252.011, which provides the department with the authority to adopt rules for administration of Chapter 252.

§23.21. Application.

§ 23.22. Farm or Ranch Land Appraisal.

§23.23. Earnest Money Contract or Option.

§23.24. Letter of Intent.

§23.25. Financial Information.

§23.26. Review of Application.

§23.27. Criteria for Approval.

§23.28. Notification.

§23.29. Denial of Application.

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Subchapter D. Closing Procedures

4 TAC §§23.41–23.47

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code,

§252.011, which provides the department with the authority to adopt rules for administration of Chapter 252.

§23.41. Preclosing Instructions.

§23.42. Closing Documents; Seller-Sponsored Loan.

§23.43. Closing Documents; Lender-Sponsored Loan.

§23.44. Closing Documents; Releases.

§23.45. Guaranty.

§23.46. Recording.

§23.47. Final Title Opinion.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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Subchapter E. Default by Participant

4 TAC §§23.61–23.63

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §252.011, which provides the department with the authority to adopt rules for administration of Chapter 252.

§23.61. Conditions of Default by Participant.

§23.62. Consequences of Default By Participant.

§23.63. Exercise of Guaranty.

Issued in Austin, Texas, on July 1, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7583.

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Subchapter F. Foreclosure Procedures

4 TAC §§23.71–23.73

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §252.011, which provides the department with the authority to adopt rules for administration of Chapter 252.

§23.71. Notice to Participant.

§23.72. Liquidation of Property.

§23.73. Distribution of Proceeds.

Issued in Austin, Texas, on July 1, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7583.

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Subchapter G. Default by Lender

4 TAC §23.81, §23.82

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §252.011, which provides the department with the authority to adopt rules for administration of Chapter 252.

§23.81. Conditions of Default by Lender.

§23.82. Consequences of Default by Lender.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7583.

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Subchapter H. Miscellaneous Provisions

4 TAC §§23.91–23.102

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §252.011, which provides the department with the authority to adopt rules for administration of Chapter 252.

§23.91. Sale or Conveyance.

§23.92. Leasing.

§23.93. Minerals.

§23.94. Reamortization.

§23.95. Amendment to Underlying Documentation and the Guaranty.

§23.96. Partial Release.

§23.97. Relinquishment of the Guaranty.

§23.98. Conflicting Provisions.

§23.99. Discrimination.

§23.100. Privacy.

§23.101. Written Communications.

§23.102. Statements and Opinions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7583.

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Chapter 27. Aquaculture Regulations

4 TAC §27.1, 27.4, 27.5, 27.7, 27.22, 27.150

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §§27.1, 27.4, 27.5, 27.7, 27.22, and 27.150, concerning definitions, issuance of a license; period of validity, license fee; renewal fees, suspension of license, marketing of cultured red fish and cultured speckled sea trout, and expiration provision. These sections are being repealed in order to reflect the adoption of an entirely new chapter 16, concerning aquaculture.

Bob Tarrant, director for commodity programs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals .

Mr. Tarrant also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be greater standardization of TDA's aquaculture program. There will be no effect on large or small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Bob Tarrant, Director for Commodity Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code (the Code), §134.002, which provides the Texas Department of Agriculture with the authority to establish an aquaculture program provided by provisions of the Texas Agriculture Code, Chapter 134, concerning aquaculture; and the Code, § 134.005, which provides the department with the authority to adopt rules to carry out an aquaculture program.

The code affected by this proposal is the Texas Agriculture Code, Chapter 134.

§27.1. Definitions.

§27.4. Issuance of License.

§27.5. License Fee; Renewal Fee.

§27.7. Suspension of License.

§27.22. Marketing of Cultured Redfish and Cultured Speckled Sea Trout.

§27.150. Expiration Provision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 26, 1996.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7583

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Part III. Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Chapter 65. Commercial Fertilizer Rules

General Provisions

4 TAC §65.1

The Office of the Texas State Chemist, Feed and Fertilizer Control Service, proposes amendments to §65.1, concerning definitions, such changes to take place on September 1, 1996. The changes are proposed as a part of a comprehensive revision of the rules done to ensure that labeling requirements for fertilizer allow the consumer to determine whether a given product is suitable for its intended use.

Dr. George W. Latimer, Jr., Texas State Chemist, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Latimer also has determined that for each year of the first five years the section is in effect, a public benefit is anticipated as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments should be addressed to Dr. George W. Latimer, Jr., State Chemist, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The amendments are proposed under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Subchapter A, §63.001, is affected by these proposed amendments.

§65.1. DEFINITIONS.

Except where otherwise provided, the terms and definitions adopted by the Association of American Plant Food Control Officials in its last published official publication are adopted by reference as the terms and definitions to control in this part. (The publication is available from the Association of American Plant Food Control Officials.) In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

[Act —Texas Fertilizer Control Act, Texas Agriculture Code, Chapter 63, 1981, as amended.]

Available Phosphate/Phosphorous/Phosphoric Acid —as P_2O_5 shall include solely and exclusively those compounds containing orthophosphate, i.e., possessing a formal +5 electrical charge.

[Container—A bag, box, carton, bottle, object, barrel, package, apparatus, device, appliance, or other item of any capacity into which a commercial fertilizer is packed, poured, stored, or placed for handling, transporting, or distributing.]

[Distribute—Sell, offer for sale, expose for sale, barter, exchange, transfer possession or title, or otherwise supply.]

[Label.—A display of written, printed, or graphic matter on or affixed to a container or on an invoice or delivery slip.]

Natural—Materials-[,] animal, plant, or mineral-[,] found solely in or produced solely by nature which have neither been mixed with any synthetic material nor changed from their initial physical state except by **washing,** air-drying, chopping, grinding, shredding, or pelleting and not changed in its chemical state except by biological degradation or chemical change initiated solely under normal conditions of aging, rainfall, sun-curing or sun-drying, composting, rotting, enzymatic or anaerobic bacterial action, or any combination thereof.

[Natural Base Fertilizer—A fertilizer containing a minimum of 50% by weight of the natural fertilizer materials and 50% by weight of primary nutrients which are derived from natural fertilizer materials.

[Natural Fertilizer—A substance composed only of natural organic and/or natural inorganic fertilizer materials and natural fillers.

[Organic Base Fertilizer—A fertilizer containing a minimum of 50% by weight of organic fertilizer materials and 50% by weight of primary nutrients which are derived from organic fertilizer materials.

[Organic Fertilizer—A material solely derived from either plant or animal products containing hydrogen and oxygen chemically linked to carbon plus one or more other elements essential for plant growth.]

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

[Registrant—A person who registers a commercial fertilizer under the Act and this chapter.]

Salvage—When applied to plant nutrients or additives, refers only to those products that have been damaged by natural causes, such as fire, water, hail, or windstorm, or by conveyance mishap.

[Service—Texas Feed and Fertilizer Control Service.]

Specialty Fertilizer—Fertilizer distributed primarily for non-farm use, including use on or in home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, or nurseries. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued inn College Station, Texas, on July 3, 1996.

TRD-9609579

Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Proposed date of adoption: September 1, 1996

For further information, please call: (409) 845–1121

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Permitting and Registration

4 TAC §65.11

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes amendments to §65.11, concerning registration, such changes to take effect September 1, 1996. The changes are proposed as a part of a comprehensive revision of the rules done to ensure that labeling requirements for fertilizer allow the consumer to determine whether a given product is suitable for its intended use.

Dr. George W. Latimer, Jr., Texas State Chemist, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Latimer also has determined that for each year of the first five years the sections are in effect, a public benefit is anticipated as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments should be addressed to Dr. George W. Latimer, Jr., State Chemist, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The amendments are proposed under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Subchapter A, §63.032, is affected by these proposed amendments.

§65.11 APPLICATION FOR REGISTRATION.

(a) (No change.)

(b) All applications for registration of [a] specialty **fertilizers,** [fertilizer or] pesticide/fertilizer mixtures **or fertilizers intended for use in organic food or fiber production programs** shall include the labeling information for the product required by the Act §63.051.

(c) The **Service** [service] may require the labeling information for other products as a condition of registration.

(d) The net weight shall be provided as a condition of registration for specialty products packaged and marketed in containers weighing one pound or less whose net contents are declared on the label in conformity with the United States Fair Packaging and Labeling Act, 15 United States Code §1415, et seq, and regulations promulgated thereunder.

(e) The **Service** [service] may require independent chemical analysis by a qualified chemist to confirm guarantees as a condition of registration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued inn College Station, Texas, on July 3, 1996.

TRD-9609580

Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Proposed date of adoption: September 1, 1996

For further information, please call: (409) 845–1121

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Labeling

4 TAC §65.22

(Editor's note: The text of the following section proposed for repeal will not be published. The sections may be examined in the offices of the Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Texas State Chemist, Feed and Fertilizer Control Service, proposes repeal to §65.22, concerning plant nutrients in addition to nitrogen, phosphorus, and potassium, and to move a portion of the section to be part of §65.21, effective September 1, 1996. The change is proposed as part of a comprehensive revision of the rules done to ensure that labeling requirements for fertilizer allow the consumer to decide whether a given product is suitable for use in an organic food or fiber production program.

Dr. George W. Latimer, Jr., State Chemist, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Latimer also has determined that for each year of the first five years the repeal is in effect, a public benefit is anticipated as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments should be addressed to Dr. George W. Latimer, Jr., State Chemist, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The repeal is proposed under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Subchapter A, §§63.051, 63.053, and 63.054, are affected by the proposed repeal.

§65.22. Plant Nutrients in Addition to Nitrogen, Phosphorus, and Potassium.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in College Station, Texas, on July 3, 1996.

TRD-9609582

Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Proposed date of adoption: September 1, 1996

For further information, please call: (409) 845–1121

4 TAC §65.26

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Texas State Chemist, Feed and Fertilizer Control Service, proposes repeal to §65.26, relating to organic and organic base nitrogen fertilizer, such changes to take effect September 1, 1996. With revision of the rules done to ensure that labeling requirements for fertilizer allow the consumer to decide whether a given product is suitable for use in an organic food or fiber production program, this section is obsolete.

Dr. George W. Latimer, Jr., State Chemist, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Dr. Latimer also has determined that for each year of the first five years the repeal is in effect, a public benefit is anticipated as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments should be addressed to Dr. George W. Latimer, Jr., State Chemist, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The repeal is proposed under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Subchapter A, §§63.051, 63.053, and 63.054, are affected by the proposed repeal.

§65.26. Organic and Organic Base Nitrogen Fertilizer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued inn College Station, Texas, on July 3, 1996.

TRD-9609583

Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Proposed date of adoption: September 1, 1996

For further information, please call: (409) 845–1121

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The Office of the Texas State Chemist, Feed and Fertilizer Control Service, proposes new §65.26, concerning requirements for fertilizers suitable for use in organic production programs, to become effective September 1, 1996. The new section is proposed as part of a comprehensive revision of the rules done to ensure that labeling requirements for fertilizer allow the consumer to decide whether a given product is suitable for use in an organic food or fiber production program.

Dr. George W. Latimer, Jr., Texas State Chemist, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Latimer has also determined that for each year of the first five years the section is in effect, a public benefit is anticipated as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments should be addressed to Dr. George W. Latimer, Jr., State Chemist, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The amendments are proposed under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Subchapter A, §§63.051, 63.053, and 63.054 are affected by these proposed new rule.

§65.26 Requirements for Fertilizers Suitable for Use in Organic Production Programs.

In addition to conforming to all other aspects of the rules, fertilizers claiming or implying suitability for use in an organic food or fiber production program shall:

(1) bear a legend on the label not unduly conspicuous in relation to the display of the registrant or guarantor of the product noting its acceptability for use in organic production programs;

(2) list in order of predominance by weight each ingredient by its usual or common name or by a name accepted by the United States Department of Agriculture's National Organic Program or as defined by a term or definition promulgated by the Association of American Plant Food Control Officials or by the Texas Department of Agriculture's Organic Certification Program;

(3) not contain any ingredient prohibited by the organizations listed in §65.26(2) for use in these fertilizers

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued inn College Station, Texas, on July 3, 1996.

TRD-9609584

Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Proposed date of adoption: September 1, 1996

For further information, please call: (409) 845–1121

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4 TAC §65.30

The Office of the Texas State Chemist, Feed and Fertilizer Control Service, proposes amendments to §65.30, concerning slow-release fertilizer, such changes to take effect September 1, 1996. The changes are proposed to clarify the section.

Dr. George W. Latimer, Jr., Texas State Chemist, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Latimer also has determined that for each year of the first five years the section is in effect, a public benefit is anticipated as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments should be addressed to Dr. George W. Latimer, Jr., State Chemist, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The amendments are proposed under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Subchapter A, §§63.051, 63.053, and 63.054 are affected by these proposed amendments.

§65.30. Slow Release Fertilizer.

(a) No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient(s). [Types of products with slow release properties recognized are:

[(1) water insoluble, such as natural organics, ureaform materials, urea-formaldehyde products, isobutylidene diurea, oxamide;

[(2) coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers;

[(3) occluded slow release, where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles;

[(4) products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), dicyanodiamide (DCD), etc.]

(b) The terms, "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release" are accepted as descriptive [of these products]. However, the **Service** [service] may require the manufacturer to provide data substantiating the claim (from tests carried out under guidance of a recognized reputable researcher acceptable to the **Service** [service]). A laboratory procedure, acceptable to the **Service** [service] for evaluating the release characteristics of the product(s), may also be required.

[(c) If an amount of nitrogen is designated as "organic," "nitrogen-containing organic" or "organic nitrogen," then the water insoluble nitrogen or the slow release nitrogen guarantee must be at least 60% of the nitrogen so designated. Coated urea may not be included in meeting the 60% requirement.] CERTIFICATION This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in College Station, Texas on Signature of Certifying Official George W. Latimer, Jr. Texas State Chemist Texas Feed & Fertilizer Control Service

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued inn College Station, Texas, on July 3, 1996.

TRD-9609585

Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Proposed date of adoption: September 1, 1996

For further information, please call: (409) 845–1121

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 20. Administration

Subchapter A. Contracts and Purchases

16 TAC §20.5

The Railroad Commission of Texas proposes new §20.5, concerning historically underutilized businesses. The proposed new section adopts by reference the rules of the Texas General Services Commission in 1 Texas Administrative Code, §§111.11-111.23, relating to historically underutilized business certification program, and promotes full and equal business opportunity for all businesses in state contracting. This rulemaking is required by the General Appropriations Act, House Bill 1, 74th Legislature, 1995, Section 111, titled "Contracting with Historically Underutilized Businesses."

Mike Regan, director, Finance and Accounting Division, has determined that for each year of the first five years the new section is in effect there will be no fiscal implications to state or local governments as a result of administering the new section. The public benefit anticipated as a result of the proposed new section will be the encouragement by the commission of the use of historically underutilized businesses when procuring goods and services through race-, ethnic-, and gender- neutral means. There is no anticipated economic cost for small businesses or individuals who will be required to comply with the new section.

Comments may be submitted to Mary Ross McDonald, Assistant Director, Office of General Counsel, Gas Services Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days following publication in the *Texas Register*. For more information, contact Ms. McDonald at (512) 463-7008.

The commission proposes the new section pursuant to Section 111, paragraph 5, General Appropriations Act, House Bill 1, 74th legislature, 1995, which requires state agencies to adopt the rules of the General Services Commission concerning historically underutilized businesses, and Texas Civil Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government.

The following articles, codes, and acts are affected by the proposed new section:

§20.5 Section 111, General Appropriations Act, House Bill 1, 74th Legislature, 1995; Texas Civil Statutes, Article 6447; and Texas Government Code, Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254.

§§20.5. Historically Underutilized Businesses.

(a) The commission adopts by reference the rules of the Texas General Services Commission in 1 TAC §§111.11-111.23, relating to historically underutilized business certification program, which became effective October 4, 1995.

(b) The adoption of this rule is required by the General Appropriations Act, House Bill 1, 74th Legislature, 1995.

(c) Copies of the rule are filed in the Railroad Commission's Finance and Accounting Division, located at the Commission's offices at 1701 North Congress, 9th floor, Austin, Texas 78701, and at all Commission district offices.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 3, 1996.

TRD-9609541

Mary Ross McDonald

Assistant Director, Gas Services Section

Railroad Commission of Texas

Earliest possible date of adoption: August 12, 1996

For further information, please call: (512) 463–7008

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Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Quality of Service

16 TAC §23.67

The Public Utility Commission of Texas proposes an amendment to §23.67, relating to transmission service for electric utilities.

The Commission recently adopted rules relating to transmission service for electric utilities in compliance with Sections 2.051 and 2.052 of the Public Utility Regulatory Act of 1996, Art. 1446c-0, Revised Civil Statutes of Texas. Section 23.67(s) of the new rules requires parties to disputes concerning the terms of transmission service to attempt to resolve their disputes through alternative dispute resolution processes. Disputes may be referred to the commission, through its complaints procedures, but the parties to the dispute are first required to attempt to resolve the dispute through alternative dispute resolution (ADR).

The commission also directed the electric utilities within the Electric Reliability Council of Texas (ERCOT) to meet with other participants in the wholesale electric market to attempt to develop a proposal for an independent system operator to perform certain functions related to access to transmission services in ERCOT. The parties that participated in these discussions were successful in developing such a proposal, and on June 10 they filed for commission approval a proposal for an ERCOT independent system operator. In connection with the proposed independent system operator, these parties filed a petition for rulemaking, requesting that the Commission amend §23.67(s) to permit certain disputes to be referred directly to the commission for resolution, rather than requiring that they first be submitted to ADR.

These parties are concerned that a dispute might arise concerning a matter that affects the continued provision of reliable electric service, and that the ADR requirement would delay the resolution of the dispute. Where such a dispute affects the provision of reliable electric service, they want the commission to resolve the matter quickly, and the rule would require the commission to hear the dispute in an emergency session. The rule includes blanket findings that such disputes affecting reliability of electric service constitute a threat to the health and welfare of the customers of the affected utility, thereby permitting the commission to hear the dispute in an emergency session. The proposed rule would also permit the Chairman of the commission to issue a decision concerning such a dispute if a quorum of the commission is not present.

The commission notes that under the proposed amendment any market participant could file a petition seeking direct relief from the commission. The commission seeks comments on whether this provision is so broad that it will undermine the requirement that parties first attempt to resolve their disputes through the alternative dispute resolution process. The commission also requests comments on whether it should include a blanket finding in the rule that matters threatening the reliability of electric service present an imminent threat to the health and welfare of the customers of the affected utility. Should the commission reserve the power to make such determinations on a case by case basis, for example? Finally, the commission requests comments on whether it can delegate authority for the chairman of the commission to act on a dispute, in the absence of the other commissioners, as the proposed rule provides.

Jess Totten, assistant director of the commission's Office of Policy Development, has determined that for the first five years that the proposed section is in effect there will be no direct fiscal implications for state and local government as a result of enforcing or administering the section, except for municipalities that operate electric utilities. The rule is narrow in scope and relates solely to the manner in which disputes over transmission service will be resolved.

Mr. Totten also has determined that for the first five years that the proposed section is in effect the public benefit anticipated as a result of enforcing the section is greater security in the supply of electricity.

The proposed amendment is not likely increase the direct cost to utilities of complying with the commission's rules. The proposed amendment will not have any impact on small businesses.

Mr. Totten also has determined that for the first five years that the proposed amendment is in effect, it will not have any impact on the opportunities for employment in the geographic areas affected by implementing these amendments.

Comments on the proposal (18 copies) may be submitted to Paula Mueller, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. The discussion above includes an assessment of the costs and benefits of this amendment, but the commission seeks comments from interested parties on the costs and benefits of adopting this amendment. Comments should refer to Project Number 16018. There will be a public meeting at which interested persons may make oral comments concerning the proposed amendment on August 1, 1996 at 10:00 a.m. at the offices of the commission at the above address.

The amendment is proposed under Texas Civil Statutes, Article 1446c-0, §1.101, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, §2.056, which authorizes the commission to determine whether the terms and conditions of transmission service are reasonable, §2.057, which directs it to adopt rules relating to transmission service, and §2.216 which prohibits anti-competitive conduct by electric utilities.

The following statute is affected by this rule: Texas Civil Statutes, Article 1446c-0, §§1.101, 2.056, 2.057, 2.216.

§§23.67. Open-access Comparable Transmission Service.

(a)-(r) (No changes.)

(s) Alternative dispute resolution. **Subject to the right to seek direct Commission review pursuant to paragraphs (9) and (10) of this subsection, in** [In] the event that a dispute arises over the provision of transmission service or ancillary services or the pricing or other terms or conditions of such services, the parties to the dispute shall engage in mediation or other alternative means for resolving the dispute, prior to filing a complaint with the commission.

(1)-(8) (No changes.)

(9) Nothing in this section shall restrict the right of a market participant to file a petition seeking direct relief from the Commission without first utilizing the alternative dispute resolution

process where an action by ERCOT might inhibit the ability of a utility to provide continuous and adequate service to its customers.

(10) Because of the imminent threat to the health and welfare of a utility's customers in the event of a reliability problem, a petitioner's dispute will be heard by the Commission in an emergency session except in those instances where a quorum of the Commission is not present. In those instances where a quorum is not present, the Chairman of the Commission shall have the authority to issue an interim order to resolve the dispute so as to protect the reliability of the system, with the order remaining in effect until such time as a quorum is present.

(t)-(u) (No changes.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609218
Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 458–0100

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Telephone

16 TAC §23.102

The Public Utility Commission of Texas proposes a new rule, Substantive Rule §23.102, relating to Imputation. The proposed rule is necessary to comply with §3.454 of the Public Utility Act of 1995 (PURA 95), which requires that the commission adopt rules governing imputation of the price of a service not later than December 1, 1996.

Ms. Jackie Follis, Senior Policy Analyst for the Legal Division in the Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Follis has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to prevent an incumbent local exchange company from selling a service or function to another telecommunications utility at a price that is higher than the rate the incumbent local exchange company implicitly includes in services it provides to its retail customers. There will be no effect on small businesses as result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Follis has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical area affected by implementing the requirements of the section.

Comments on the proposed rule (16 copies) may be submitted to Paula Mueller, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. Additionally, the commission invites specific comments regarding how the passage of S. 652 (Federal Telecommunications Act of 1996) impacts this rule. All comments should refer to Project Number 14360. The commission staff will conduct a public hearing on this rulemaking under Texas Government Code §2001.029 at the commission offices on August 15, 1996, at 10:00 a.m.

The new section is proposed under the Public Utility Regulatory Act of 1995, Texas Civil Statutes Articl 1146c-O, §§1.101, 3.454 (Vernon Supp. 1996), §1.101, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically §3.454, which requires that the commission adopt rules governing imputation of the price of a service not later than December 1, 1996.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Texas Civil Statutes Article 1146c-O, §§1.101, 3.454 (Vernon Supplement 1996) (PURA 95).

§§23.102. Imputation.

(a) Application. This section applies to incumbent local exchange companies ("ILECs") as that term is defined in the Public Utility Regulatory Act of 1995 ("PURA 95") §3.002(3). The obligations prescribed by this section may be applied to an ILEC with fewer than one million access lines in the state only on a bona fide request from a party having a justiciable interest.

(b) Purpose. This section implements the state's regulatory policy to prevent an ILEC from selling a wholesale service or function to another telecommunications utility at a price that is higher than the rate the ILEC implicitly includes in retail services it provides.

(c) Definitions. The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise.

(1) Competitively available. A service is competitively available when it may be obtained from at least one source other than an ILEC to an extent sufficient to discipline the price charged by the ILEC in the state. In the context of an imputation test for a retail service, there shall be a rebuttable presumption that a wholesale service is competitively available if:

(A) the ILEC providing the retail service has elected under Subtitle H of PURA 95 and the wholesale service is in Basket III; or,

(B) the service is available from a non-ILEC competitor, other than a pure reseller, to 60% of the access lines to which the retail service is or will be available.

(2) Retail service. A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that

can be purchased individually and which are offered as alternatives to each other are services, not rate elements.

(3) Wholesale service. A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(d) Services for which imputation is required. Except as provided otherwise in subsection (e) of this section, imputation of the price of a wholesale service is required in establishing the rates for a retail service if:

(1) the retail service cannot be purchased at wholesale rates for resale by a competitor; and,

(2) a wholesale service that is not competitively available is necessary for the competitor to provide its competing service.

(e) Rates to which imputation is not required. The price of a retail service in Basket I of Subtitle H or a retail service whose rate is capped pursuant to Subtitle I of PURA 95 shall not be subject to the requirements of this section unless:

(1) the four year price cap under PURA 95 Subtitle H or the six-year price cap under PURA 95 Subtitle I has expired;

(2) the price cap applicable to the service is raised;

(3) the ILEC's rates for local exchange telephone service are restructured or rebalanced; or,

(4) the service is reclassified from Basket I to Basket II or III.

(f) Imputation on a service-by-service basis. Imputation shall be applied on a service-by-service basis, not on a rate-element-by-rate-element basis.

(g) Imputation methodology. An imputation study filed pursuant to this section shall demonstrate that the price the ILEC charges for a retail service recovers the cost of providing the service. Alternatively, the study may demonstrate that, no later than the second year after the retail service is first offered, the revenue the ILEC receives from the service recovers the cost of providing the service. For purposes of this section, the cost of providing a retail service is defined as the sum of:

(1) specifically tariffed premium rates for the noncompetitive services or service functions, or elements of these noncompetitive services or service functions (or their functional equivalents) that are used to provide the retail service;

(2) the total service long-run incremental costs of the competitive services or service functions that are used;

(3) any costs, not otherwise reflected in paragraphs (1) or (2) of this subsection, that are specifically associated with provision of the retail service or group of services; and,

(4) any cost or surcharge associated with an explicit subsidy that is applied to all providers of the retail service for the purpose of promoting universal service.

(h) Imputation study for a new service or a revised rate. In forecasting revenue and costs in an imputation study for a new service or a revised rate, it shall be the responsibility of the ILEC to demonstrate:

(1) the validity of the data on which the forecast is based;

(2) the validity of the statistical method or model on which the forecast is based; and,

(3) the validity of the interpretation and application of the forecast in the imputation study.

(i) Timing of imputation studies. An imputation study shall be filed by an ILEC under any of the circumstances set out in paragraphs (1)-(5) of this subsection.

(1) Upon complaint by a party, and a finding by the commission that an imputation study is in the public interest, or on the commission's own motion. Upon receiving a complaint calling for an imputation study, the commission shall determine within 90 days whether an imputation study shall be required.

(2) When an ILEC files an application to reduce a rate for a retail service for which imputation is required.

(3) When an ILEC applies to increase a rate for a wholesale service that:

(A) is not competitively available; and,

(B) is necessary for a competitor to provide its competing service or is a component of a retail service for which imputation is required.

(4) In conjunction with an application to provide a new service or contract that uses a wholesale service that:

(A) is not competitively available; and,

(B) is necessary for a competitor to provide its competing service.

(5) As otherwise ordered by the commission.

(j) Confidentiality of data. If a party classifies data filed with the commission as confidential, the party should designate the section of the Public Information Act (Chapter 522, Texas Government Code) that excepts the information from public disclosure. The commission will treat such information as confidential subject to the provisions of the Public Information Act and protective orders issued by the commission applicable to the data.

(k) Waiver provisions.

(1) The commission may waive the imputation requirement for a public interest service such as 9-1-1 or dual party relay service if the commission determines that the waiver is in the public interest.

(2) After notice and hearing, and subject to the requirements of law, the commission may waive any provision of this section for good cause.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609216
Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Earliest possible date of adoption: August 12, 1996

For further information, please call: (512) 458–0100

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TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 163. Licensure

22 TAC §§163.1, 163.6, 163.8

The Texas State Board of Medical Examiners proposes amendments to §§163.1, 163.6, and 163.8 concerning the National Board of Medical Examiners examination and licensure graduates of simultaneous MD-PhD or DO-PhD programs.

Tim Weitz, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications as a result of enforcing or administering the sections as proposed.

Mr. Weitz also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to make the licensure process more efficient, acknowledge the validity of the National Board of Osteopathic Medical Examiners examination for purposes of licensure, and promote MD-PhD and DO-PhD programs so as to result in more qualified licensure applicants. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §3.04 and §3.05 are affected by these amendments.

§163.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

Examinations administered by the board for licensure by examination -To be eligible for licensure by examination an applicant must sit for the required examination administered by the board and pass **. A passing** [with a] score **is** [of] 75 or better on [each part] **the USMLE and the Texas medical jurisprudence examinations. A passing grade on Part III of the NBOME examination or its successor shall be determined by NBOME.** All steps or components must be passed within seven years. The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE); **Part III of the National Board of Osteopathic Medical examiners (NBOME) examination or its successor after September 1, 1997;** and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

§163.6. Procedural Rules for Licensure Applicants.

(a) Applicants for licensure:

(1)-(7) (No Change.)

(8) must have the application for licensure complete in every detail **20** [60] days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to being considered by the board for licensure, as required by section 163.9 of this title (relating to Temporary Licensure-Regular); and

(9)-(12) (No change.)

(13) must pass, within seven years all parts of all examinations required for licensure. The board may consider for licensure graduates of simultaneous MD-PhD or DO-PhD programs who have passed all parts of their required examinations no later than two years after their MD or DO degree was awarded.

(b) (No change.)

(c) Applicants for licensure by endorsement:

(1) (No change.)

(2) who have not been examined for licensure in a ten-year period prior to the filing date of the application must pass Day III or Component II of the FLEX prior to June 1988, or SPEX, **with a grade of 75 or higher,** unless the applicant has obtained:

(A)-(B) (No change.)

§163.8. Administration of Examinations.

(a) The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE)**; Part III of the National Board of Osteopathic Medical Examiners (NBOME) examination or its successor after September 1, 1997** and the Texas medical jurisprudence examination in writing, at times and places as designated by the board.

(b)-(d) (No change.)

(e) All NBOME Part III questions and answers, with grades attached, shall be preserved for at least one year at the National Board of Osteopathic Medical Examiners offices.

(f) [(e)] An applicant shall not be eligible to sit for the Texas medical jurisprudence examination until the application is complete and until the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

(g) [(f)] an applicant shall not be eligible to sit for the USMLE Step 3 examination until:

(1) the application is complete;

(2) the applicant has passed:

(A) the USMLE Step 1 and USMLE Step 2 examinations with a grade of 75 or better on each step within three attempts; or

(B) FLEX Component I with a grade of 75 or better within three attempts; or

(C) the 1991 NSBME Comprehensive I and USMLE Step 2 examinations with a grade of 75 or better on each step and part within three attempts; and

(3) the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

(h) an applicant shall not be eligible to sit for the NBOME Part III examination until:

(1) the application is complete;

(2) the applicant has passed the NBOME Part I and NBOME Part II examinations with a passing grade as determined by NBOME on each part within three attempts; and

(3) the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 26, 1996.

TRD-9609640
Bruce A. Levy, M.D.,J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 305-7016

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Part XXIII. Texas Real Estate Commission

Chapter 537. Professional Agreements and Standard Contracts

22 TAC §§537.11, 537.45

The Texas Real Estate Commission proposes an amendment to §537.11, and proposes new §537.45, concerning standard contract forms.

The amendment to §537.11 would add a contract addendum form to the list of standard contract forms promulgated by the commission. The new form, TREC Number 38-0, Addendum for Seller's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards, would be used by sellers and brokers to provide information about lead-based paint and lead-based hazards to prospective buyers. Rules adopted by the Environmental Protection Agency and the United States Department of Housing and Urban Development under The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 102-550) require purchase contracts concerning residential property built prior to 1978 to include an addendum containing a lead warning and disclosure of the seller's knowledge of the presence of lead-based paint or lead-based paint hazards. The federal requirements are effective for owners of more than four dwellings September 6, 1996 and for owners of four or less dwellings December 6, 1996.

The form being proposed for adoption was developed by the Texas Real Estate Broker-Lawyer Committee, a committee of six real estate brokers appointed by the commission and six attorneys appointed by the State Bar of Texas. Licensed real estate brokers and salesmen are generally required to use contract forms promulgated by the commission when negotiating the sale of real property.

New §537.45 would adopt TREC Number 38-0 by reference. In addition to a lead warning statement, the form contains provisions for the seller to disclose the presence of lead-based paint or lead-based paint hazards in the property being sold and to acknowledge that the buyer has been given copies of any inspections reports indicating the presence of lead-based paint or lead-based paint hazards as well as a copy of the federally-required pamphlet, *How to Protect Your Family from Lead-Based Paint.*

The form also contains provisions permitting the buyer to have the property inspected for the presence of lead based paint or lead based paint hazards and to terminate the contract if either is reported. The buyer may waive the inspection requirement.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Any revenue received by the Texas Real Estate Commission from the sale of copies of the forms would be offset by the costs of making the copies available. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of standardized contract forms for use in real estate transactions which comply with federal disclosure requirements for lead based paint and lead based paint hazards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections other than the cost of the forms, estimated at $5.00 per pad of 50 copies.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment and new section are proposed under Texas Civil Statutes, Article 6573a, §16(e), which authorize the Texas Real Estate Commission to adopt rules requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission.

The amendment and new section affects Texas Civil Statutes, Article 6573a, §16.

§537.11. Use of Standard Contract Forms.

(a) Standard Contract Form TREC No. 2-4 is promulgated for use as an addendum only to another promulgated standard contract form. Standard Contract Form TREC No. 9-2 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-2 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of

contracts. Standard Contract Form TREC No. 11-2 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 13-1 is promulgated for use as an addendum concerning new home insulation to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-2 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-2 is promulgated for use in the resale of residential real estate where there is all cash or owner financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 21-2 is promulgated for use in the resale of residential real estate where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 23-1 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-1 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-1 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-2 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 27-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is an inspection with a right to terminate. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 29-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. Standard Contract Form TREC No. 30-0 is promulgated for use in the resale of a residential condominium unit where there is all cash or seller financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 31-0 is promulgated for use in the resale of a residential condominium unit where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form No. 35-0 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation. Standard Contract Form TREC Form No. 36-0 is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-0 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. **Standard Contract Form TREC No. 38-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when an addendum relating to lead based paint or lead based paint hazards is required by federal law.**

(b)- (h) (No Change.)

§537.45. Standard Contract Form TREC No. 38-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 38-0 approved by the Texas Real Estate Commission in 1996. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1996.

TRD-9609181
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 867-3336

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 106. Exemptions From Permitting

The commission proposes new §§106.1-106.6, concerning General Requirements and §106.21, concerning Applicability.Proposed new §§106.1-106.6 contain general provisions and definitions related to exemptions from air quality permitting requirements.Proposed new §106.21 contains provisions related to applicability of Subchapter B.

This rulemaking action is the first action in the commission's plan to recodify standard exemptions in a new Chapter 106, concerning Exemptions from Permitting.Prior to the construction of a new facility or a change to an existing facility, permit authorization must be obtained from the commission.The Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057, allows the commission to exempt types of facilities and changes to permitted facilities from the statutory requirement to obtain a preconstruction permit if the commission determines these types of facilities or changes to be insignificant sources of air contaminants.The commission currently exempts these types of facilities and changes from permitting requirements by the Standard Exemption (SE) List in §116.211.Chapter 106 will eventually replace §116.211, including the SE List, and will provide a unique section number for each exemption.Chapter 106 will be organized in subchapters containing related exemptions.

Exemptions will be added to Chapter 106 in future rulemaking actions through a stepwise process. The majority of the exemptions from the current SE List will be transferred to Chapter 106 unchanged from their current form in future rulemaking actions.Where the commission determines that

changes are needed to specific exemptions, they will be proposed for inclusion in this new chapter with those changes.

Once all of the exemptions in the current SE List have been duplicated in this new chapter, §116.211 will be repealed.Construction or modification of facilities that commences after September 16, 1996, and after a particular exemption has been added to Chapter 106 must qualify for an exemption under this new chapter; those exemptions in §116.211 will no longer be available for use.Until an exemption is listed in the new chapter, the exemptions in §116.211 may continue to be used to exempt facilities.

This initial action in the recodification process will create a new Subchapter A which will contain the general requirements related to exemptions currently found in §116.211.Subchapter B, concerning Changes at Permitted Facilities, will contain all exemptions related to changes at permitted facilities.

The rules address the following problem: the current structure of the SE List hampers flexibility and speed in regulatory reform.The SE List is currently contained in one section of the Texas Administrative Code. *Texas Register* rules prohibit more than one rulemaking proceeding from amending a given section at the same point in time.This prohibition limits any rulemaking activities concerning all 126 standard exemptions from occurring any time one or more of the exemptions are being amended.This proposal is the first step in assigning each previous standard exemption a section number.This approach will allow rulemaking to proceed on individual exemptions.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there should be no significant cost to state or local government as a result of enforcing or implementing the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient use of commission resources and a clearer understanding of exemptions from permitting.There are no fiscal implications for facilities and small businesses, as they are not affected by the recodification of existing rules.There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held August 8, 1996, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 North IH-35, Park 35 Technology Center, Austin.The hearing is structured for the receipt of oral or written comments by interested persons.Individuals may present oral statements when called upon in order of registration.Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.All comments should reference Rule Log Number 96122-106-AI.Comments must be received by 5:00 p.m., August 12, 1996.For further information, please contact Jim Dodds, (512) 239-1119 or Phil Harwell, (512) 239-1517.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900.Requests should be made as far in advance as possible.

Subchapter A. General Requirements.

30 TAC §§106.1-106.6

The new sections are proposed under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The new sections implement Texas Health and Safety Code, §382.057.

§106.1. Purpose.

This chapter identifies changes to permitted facilities and types of facilities which the commission has determined will not make a significant contribution of air contaminants to the atmosphere and pursuant to the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057, are exempt from the permit requirements of the TCAA, §382.0518.

§106.2. Applicability.

This chapter applies to changes to permitted facilities and types of facilities listed in this chapter where construction or the change is commenced on or after September 16, 1996.Changes to permitted facilities and types of facilities contained in this chapter must qualify for an exemption under this chapter and may not be qualified for an exemption listed in §116.211 of this title (relating to Standard Exemption List).Changes to permitted facilities and types of facilities not contained in this chapter may qualify for an exemption under §116.211 of this title.

§106.3. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control.In addition to the terms which are defined by the TCAA and in §101.1 of this title (relating to General Rules) and §116.10 of this title (relating to General Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Major stationary source -Shall have the same definition of this term in §116.12 of this title (relating to Nonattainment Review Definitions) for §106.4(b)(2) and (3) of this title (relating to Requirements for Exemption from Permitting) and shall have the same definition of this term in 40 Code of Federal Regulations (CFR), §52.21 for §106.4(b)(4) of this title.

Major Modification -Shall have the same definition of this term in §116.12 of this title for §106.4(b)(2) and (3) of this title and have the same definition of this term in 40 CFR, §52.21 for §106.4(b)(4) of this title.

Stationary source-Shall have the same definition of this term in §116.12 of this title for §106.4(b)(2) and (3) of this title and shall have the same definition of this term in 40 CFR, §52.21 for §106.4(b)(4) of this title.

§106.4. Requirements for Exemption from Permitting.

(a) The following changes to facilities and types of facilities shall be exempt.

(1) A change to a permitted facility shall meet the general requirements of subsection (b) of this section and the conditions of a specific exemption in Subchapter B of this chapter (relating to Changes at Permitted Facilities).

(2) A facility shall meet the general requirements of subsection (b) of this section and the conditions of a specific exemption in this chapter except for exemptions in Subchapter B of this chapter.

(3) A change to a non-permitted facility shall be exempted if the facility meets the general requirements of subsection (b) of this section and the conditions of a specific exemption in this chapter except for Subchapter B of this chapter.

(b) To qualify for an exemption, the following general requirements must be met.

(1) Total actual emissions from a facility, or resulting from a change to a permitted facility, shall not exceed 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_x); or 25 tpy of volatile organic compounds (VOC) or sulfur oxides (SO_2) or inhalable particulate matter (PM_{10}); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(2) Except as noted in paragraph (3) of this subsection, any facility or group of facilities, which constitutes a new major stationary source, or any change which constitutes a major modification under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for an exemption under this chapter.

(3) Any facility or group of facilities, which constitute a stationary source, that emits NOX and is located in the Houston/ Galveston ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) or the Beaumont/Port Arthur ozone nonattainment area (Hardin, Jefferson, and Orange Counties) can exceed the major source/major modification level listed in Table 1 of §116.12 of this title (relating to Nonattainment Review Definitions) if the following conditions are met.

(A) Any new facility or group of facilities, which constitute a new stationary source and emit NO_x in an amount, after netting, exceeding the major source threshold or major modifications exceeding the major modification level for NO_x listed in Table 1, shall register by submitting a PI-8.

(B) The registration shall be submitted prior to commencement of construction, but not later than December 31, 1997.

(C) No other applicable limits contained in this section shall be exceeded.

(4) Any facility or group of facilities, which constitutes a new major stationary source, or any change which constitutes a major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for an exemption under this chapter.

(5) Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), total actual emissions from all exempted facilities at an account shall not exceed 250 tpy of CO or NO_x; or 25 tpy of VOC or SO_2 or PM_{10}; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(6) Construction of a facility or a change to a permitted facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific exemption in this chapter must meet the revised requirements to qualify for an exemption.

(7) A facility or change to a permitted facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(8) There are no permits under the same Texas Natural Resource Conservation Commission (TNRCC) account number that contain a condition or conditions precluding the use of a standard exemption or an exemption under this chapter.

(c) No person shall circumvent by artificial limitations the requirements of §116.110 of this title (relating to Applicability).

(d) After construction of the facility, the emissions from the facility shall comply with all rules and regulations of the TNRCC and with the intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public, and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility.

(e) Facilities or changes to permitted facilities are not exempted by this chapter from any permits or registrations required by local air pollution control agencies. Any such requirements must be in accordance with TCAA, §382.113 and any other applicable law.

§106.5. Public Notice and Comment Procedures.

(a) This section applies to facilities exempted under this chapter that are located at a permanent or temporary concrete plant engaged in wet batching, dry batching, or central mixing, or producing specialty wet batch, concrete, mortar, grout mixing, or pre-cast concrete products.

(b) The executive director shall make a copy of the registration materials and a preliminary analysis of those materials available to public inspection as provided by §116.131 of this title (relating to Public Notification Requirements).

(c) The owner or operator of the plant shall publish notice of the proposed construction in conformance with §116.132 of this title (relating to Public Notice Format) and §116.134 of this title (relating to Notification of Affected Agencies).

(d) Public comment procedures on the registration shall conform with §116.136 of this title (relating to Public Comment Procedures).

§106.6. Registration of Emissions.

(a) An owner or operator may certify and register the maximum emission rates from facilities exempted under this chapter in order to establish enforceable allowable emission rates which are below the emission limitations in §106.4 of this title (relating to Requirements for Exemption from Permitting).

(b) All representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration under this section become conditions upon which the exempt facility shall be constructed and operated.

(c) It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the certified registration is first revised.

(d) The certified registration must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility.

(e) The certified registration shall be maintained on-site and be provided immediately upon request by representatives of the Texas Natural Resource Conservation Commission or any air pollution control agency having jurisdiction. Copies of the certified registration shall be included in applications for permits subject to review under the undesignated heads in Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609280
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: October 2, 1996
For further information, please call: (512) 239-1966

Subchapter B. Changes at Permitted Facilities

30 TAC §106.21

The new section is proposed under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The new section implements Texas Health and Safety Code, §382.057.

§106.21. Applicability.

This subchapter only contains exemptions for changes to permitted facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609281
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: October 2, 1996
For further information, please call: (512) 239-1966

Subchapter C. Domestic and Comfort Heating and Cooling

30 TAC §106.102

The commission proposes new §106.102, concerning Comfort Heating. The new section is proposed to exempt combustion units used exclusively for comfort heating from the preconstruction permitting requirements of the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057 and §382.0518.

This rulemaking action is part of the commission's plan to recodify standard exemptions in a new Chapter 106, concerning Exemptions from Permitting.

This action in the recodification process will create a new §106.102, which is a recodification of current Standard Exemption (SE) 3 in §116.211, with changes to allow for burning distillate fuel oil (containing less than 0.3% sulfur) and to allow for the burning of used oil in comfort space heaters. Space heaters constructed or modified after the effective date of this section (anticipated to be October 28, 1996), will be subject to the requirements of this new chapter; however, current SE 3 may continue to be used until this rulemaking action is complete.

The rule addresses the following problem: the current standard exemption for comfort heating, SE 3, does not allow for the burning of distillate fuel oil or used oil in space heaters. Thus, the owner/operator of a space heater who wants to burn distillate fuel oil or used oil would be required to obtain a new construction permit. The rule solves this problem by creating §106.102, relating to Comfort Heating.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there should be no significant cost to state or local government as a result of enforcing or implementing the section.

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient use of commission resources and a clearer understanding of exemptions from permitting. The fiscal implications for facilities and small businesses affected by the section should be a reduction in fees by qualifying for a standard exemption rather than a permit. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

A public hearing on the proposal will be held August 8, 1996, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96121-106-AI. Comments must be received by 5:00 p.m., August 12, 1996. For further information, please contact Jim Dodds, (512) 239-1119 or Phil Harwell, (512) 239-1517.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new section is proposed under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new section implements Texas Health and Safety Code, §382.057.

§106.102. Comfort Heating.

This section exempts combustion units designed and used exclusively for comfort heating purposes employing liquid petroleum gas, natural gas, distillate fuel oil containing less than 0.3% sulfur, or solid wood as fuel. Combustion of bark chips, sawdust, wood chips, treated wood, or wood contaminated with chemicals is not included. Used oil that has not been mixed with hazardous waste may be used as fuel in space heaters provided that:

(1) the space heater or combination of space heaters at the same account have a maximum capacity of 1.0 Million Btu per hour (MMBtu/hr) provided each individual heater is not greater than 0.5 MMBtu/hr;

(2) the combustion gases from the heater(s) are vented to the ambient air through an unobstructed vertical vent; and

(3) the heater(s) burns only used oil that the owner or operator generates on-site or used oil received from household do-it-yourself used oil generators.

Issued in Austin, Texas, on June 27, 1996.

TRD-9609282
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: October 2, 1996
For further information, please call: (512) 239-1966

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 375. State Water Pollution Control Revolving Fund

Board Action on Application

31 TAC 375.52

The Texas Water Development Board (the board) proposes an amendment to 375.52 concerning Lending Rates. The amendment to 375.52 will reduce the interest rate for SRF variable rate loans resulting from the Board's cost savings on extension of its Standby Bond Purchase Agreement.

Pamela Ansboury, the Director of Finance, has determined that for each year of the first five years the section is in effect there will be fiscal implications as a result of enforcing or administering the section. Effect on State government is an estimated reduction in cost of $5,833 for 1996, and $35,000 for each of the years 1997, 1998, and 1999. Effects on local government as a result of enforcing or administering the section is an estimated reduction in cost of $2,500 in each of the years 1997, 1998, and 1999. The savings to State government will pass on to the local government in future years after 2000.

Ms. Ansboury also has determined that for each year of the first five years that the section is in effect the public benefit anticipated as a result of enforcing the sections will be to provide cost savings to users of the Board's SRF variable rate loans. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the amendment will be accepted for 30 days following publication and may be submitted to Kevin Ward, Development Fund Manager, (512) 463-8221 or Suzanne Schwartz, General Counsel, (512) 463-7891, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendment is proposed under the authority of the Texas Water Code, 6.101, 16.342, and 15.605 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

Chapter 15, Subchapter J is the statutory provision affected by the proposed amendment.

§375.52. Lending Rates.

(a)-(b) (no change.)

(c) Variable Rates. The interest rate for SRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus **31.5** [36.5] basis points. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the Development Fund Manager. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the Development Fund Manager and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections (a) and (b) of this section.

(d) (no change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 31, 1996.

TRD-9609592
Suzanne Schwartz
General Counsel
Texas Water Development Board

Proposed date of adoption: August 15, 1996
For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System

Chapter 81. Insurance

§§81.1, 81.7, 81.11

The Employees Retirement System of Texas (ERS) proposes amendments to §§81.1, 81.7 and 81.11. Proposed amendments to §81.1 concern definitions in the Uniform Group Insurance Program (UGIP) which will bring the rules into conformance with Senate Bill 102, 74th Texas Legislature, Regular Session and define the fully-insured managed care plans of health coverage, HealthSelect of Texas, and HealthSelect Plus. Proposed amendments to §81.7 concern enrollment and participation and clarify when participants in the UGIP are eligible to enroll and make changes to their coverage. Proposed amendments to §81.11 concern termination of coverage relating to the misrepresentation or fraud by a participant in attempting to attain coverage under the UGIP and will bring the rules into conformance with the Texas Insurance Code, Article 3.50-2, as amended by Senate Bill 1231, 74th Texas Legislature, Regular Session.

William S. Nail, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Mr. Nail has also determined that for each of the first five years the sections as proposed are in effect the benefits to participants will be a higher salary level for determining the amount of term insurance that may be purchased, clarification concerning when participants may make coverage changes, and rules to set forth when coverage may be terminated for fraud or misrepresentation. There will be no effect on small business. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposed amendments may be submitted to William S. Nail, General Counsel, P. O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under the Insurance Code, Article 3.50-2, §4A, which provides the ERS with the authority to promulgate all rules and regulations necessary to implement and to administer the Uniform Group Insurance Program.

Statutes affected by these amendments are Insurance Code, Article 3.50-2.

§81.1 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

HealthSelect of Texas -The statewide point-of-service plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO.

HealthSelect Plus -The optional managed care plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO on a regional basis.

HMO-A health maintenance organization approved by the board to provide health care benefits to eligible participants in the program in lieu of participation in the program's **HealthSelect of Texas Plan or HealthSelect Plus plan** [self-insured health plan].

[Insured plan-that plan of coverage administered and/or underwritten by a qualified carrier (other than an HMO) as defined in the Insurance Code, Article 3.50-2, §3(a)(9).]

Salary -The salary to be used for determining optional term life and disability income limitations will be the employee's regular salary, including longevity, shift differential, [and] hazardous duty pay, **and benefit replacement pay,** received by the employee as of the employee's first day of active duty within a contract year. No other component of compensation shall be included. Non-salaried elective and appointive officials or members of the legislature may use the salary of a state district judge or their actual salary as of September 1 of each year.

[Self-insured health plan-that plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO.]

§81.7 Enrollment and Participation.

(a) Full-time employees and their dependents.

(1) A new employee, other than a part-time state agency employee, will automatically be enrolled in the basic plan of health and life insurance, effective on his or her first day of active duty. To enroll eligible dependents, elect to enroll in an approved HMO **or in HealthSelect Plus,** and/or elect optional coverages, the employee must complete **an enrollment** [a] form on the first day of active duty or within 30 days from that date. The employee may decline any and all coverages in the program by completing **an enrollment** [a] form on or before the first day of active duty.

(2) **An enrollment form** [Applications] for coverages to be effective on the day the employee begins active duty must be completed and signed on or before that day. Coverages for which the **enrollment form** [application] is completed and signed after the first day of active duty and within 30 days after that day will be effective on the first day of the month following the **signature** date **on the enrollment form** [of application]. **Enrollment forms** [Applications] completed and signed after the first 31 days will be governed by subsection (f) of this section.

(3) Coverages for dependents of an employee will be effective on the same day the employee's coverage becomes effective if an **enrollment form** [application] is completed and signed on or before the effective date of the employee's coverage. If the **enrollment form** [application] is completed and signed within 30 days after the employee's effective date, the dependent's coverage will be effective on the first day of the month following the **signature** date **on the enrollment form** [of application]. Coverage for a newly eligible dependent, other than a dependent referred to in paragraph (4) of this subsection, will be effective on the date the person becomes a dependent if an **enrollment form** [application] is completed and signed on or within 30 days after the date the dependent first becomes eligible. If the **enrollment form** [application] is completed and signed more than 30 days after the employee's effective date or the

date the dependent is first eligible, as the case may be, the **enrollment form** [application] will be governed by the rules in subsection (f) of this section. The requirement that an **enrollment form** [application] must be completed and signed within 30 days after a dependent first becomes eligible is waived if the level of health, dental, and/or life coverages were in effect prior to the acquisition of the newly eligible dependent; however, an **enrollment form** [application] must be completed before verification of coverage will be provided to the carrier(s).

(4) [Unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits),] **A** [a] newborn natural child or eligible newborn grandchild will be covered immediately and automatically from the date of birth in the health plan in effect for the employee or retiree.

(A) If there are no other dependents covered at the time of birth, the newborn natural child or eligible newborn grandchild will be automatically covered in the same health plan in which the employee or retiree is then covered. **Unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits), to** [To] continue coverage for more than 30 days after the date of birth, an **enrollment form** [application] for health coverage must be submitted within 30 days after the date of birth.

(B) (No change.)

(5) (No change.)

(6) The effective date of **HealthSelect of Texas** [self-insured health plan] coverage for an employee's or retiree's dependent, other than a newborn natural child or eligible newborn grandchild, will be as stated in paragraph (3) of this subsection, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, **HealthSelect of Texas** [the self-insured health plan] coverage will be effective on the day after the day the dependent is released from the hospital or institution.

(b)-(d) (No change.)

(e) Special rules for additional or alternative coverages.

(1)-(2) (No change)

(3) An employee/retiree and eligible dependents may participate in HealthSelect Plus if they reside in the approved service area of HealthSelect Plus.

(4)[(3)] A participant electing optional additional coverage and/or HMO **or HealthSelect Plus** coverage in lieu of the basic plan of insurance is obligated for the full payment of premiums. If the premiums are not paid, all coverages not fully funded by the state contribution will be canceled. A person entitled to the state contribution will retain member only health coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in subsection (i)(2)(B) of this section.

(5)[(4)] An employee, retiree, or other eligible participant in the Uniform Group Insurance Program enrolled in an HMO whose contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible **or to HealthSelect Plus (if the participant is eligible)** by completing an **enrollment form** [application] during the annual [limited] enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in **HealthSelect of Texas** [the self-insured health plan] without evidence of insurability by completing an **enrollment form** [application] during the annual [limited] enrollment period, if the participant is eligible to enroll in another approved HMO. The preexisting conditions exclusion will apply, as defined in subsection (g) of this section. The effective date of the change in coverage for the employee/retiree shall be September 1. Eligible dependents shall be subject to evidence of insurability requirements. The preexisting conditions exclusion will apply as defined in subsection (g) of this section. The effective date of coverage for dependents may be either September 1 or the first day of the month following the date approval is received by the **department** [employing agency];

(C) enroll in **HealthSelect of Texas** [the self-insured health plan] without evidence of insurability by completing an **enrollment form** [application] during the annual [limited] enrollment period, if the participant is not eligible to enroll in another approved HMO (an approved HMO is not available to the participant). Eligible dependents shall not be subject to evidence of insurability requirements. The preexisting conditions exclusion will not apply except that, if the participant's or dependent's enrollment in **HealthSelect of Texas** [the self-insured health plan] occurs within 12 months of the initial date of coverage under the current term of employment or retirement, the exclusion will apply for the remainder of such 12-month period. The effective date of the change in coverage will be September 1; or

(D) if the participant does not make one of the elections, as defined in subparagraphs (A)-(C) of this paragraph, the participant will automatically be enrolled in the basic plan. Evidence of insurability and preexisting conditions exclusion for the participant and the participant's dependents will apply as referenced in subparagraph (B) of this paragraph.

(6)[(5)] An employee, retiree, or other eligible program participant enrolled in an HMO whose contract is terminated during the fiscal year or which fails to maintain compliance with the letter of agreement will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible. The effective date of the change in coverage will be determined by the board;

(B) enroll in **HealthSelect of Texas** [the self-insured health plan] without evidence of insurability **or in HealthSelect Plus if the participant is eligible, provided** [if] the participant is not eligible to enroll in another approved HMO. Application of the preexisting conditions exclusion **(for HealthSelect of Texas)** and the effective date of the change in coverage will be determined by the board; or

(C) if a participant is eligible to enroll in another HMO, the board may allow the participant to enroll in **HealthSelect of Texas** [the self-insured health plan] without evidence of insurability and the preexisting conditions exclusion**, or in HealthSelect Plus, if the participant is eligible**. The effective date of the change in coverage will be determined by the board.

(f) Changes in coverages beyond the first 31 days of eligibility.

(1) An employee or retiree who wishes to add or increase coverage, add eligible dependents to **HealthSelect of Texas** [the self-insured health plan], or change coverage from an HMO **or HealthSelect Plus** to **HealthSelect of Texas** [the self-insured health plan] more than 30 days after the initial date of eligibility must make application for approval by providing evidence of insurability acceptable to the system. Unless not in compliance with Chapter 85 of this title **(relating to Flexible Benefits)**, coverage will become effective on the first day of the month following the date approval is received by the employee's benefits coordinator or by the system, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee in a leave without pay status, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(2) The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV Optional Term Life insurance;

(B) employees who wish to enroll in or increase Optional Term Life insurance, Short Term Disability, or Long Term Disability more than 30 days after the initial date of eligibility;

(C) employees, retirees, or eligible dependents who wish to enroll in HealthSelect of Texas more than 30 days after the initial date of eligibility, except as provided in subsections (a), (e)(5)-(6), and (f)(4)-(8) of this section.

(D) employees enrolled in the program whose coverage was dropped or canceled, except as provided in subsection (h)(2),(3), and (5) of this section.

[(2) The evidence of insurability provision applies only to those employees, retirees, or eligible dependents who:]

[(A) did not elect all available coverages on or within 30 days after the initial date of eligibility;]

[(B) declined or failed to enroll in the health insurance plan on or within 30 days after the initial date of eligibility; or]

[(C) enrolled in any coverage under the basic plan and later dropped or were canceled from such coverage, except as provided in subsection (h)(2) and (3) of this section.]

(3) An employee or retiree who wishes to add eligible dependents to the employee's or retiree's HMO or HealthSelect Plus coverage may do so:

(A) during the annual enrollment period (coverage will become effective on September 1); or

(B) when a dependent terminates employment, when a dependent loses health coverage for reasons other than voluntary cancellation, when a dependent changes employment status, when an employee or retiree divorces, or when a spouse dies, and as provided in paragraph (10) of this subsection, unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits). The effective date of coverage will be the first day of the month following the event date if an enrollment form is completed and signed on or within 30 days following the date the dependent becomes eligible under this rule.

[(3) An employee or retiree who wishes to add eligible dependents to the employee's or retiree's HMO coverage may do so during the annual enrollment period, when a spouse terminates employment, when a dependent loses health coverage for reasons other than voluntary cancellation, when a dependent moves into the service area of the employee's or retiree's HMO, and as provided in paragraph (10) of this subsection, unless not in compliance with Chapter 85 of this title.]

(4)[(5)] An employee, retiree, or other participant, who is enrolled in an approved HMO and permanently moves his or her place of residence out of that HMO's service area to a location where the participant is no longer eligible to be enrolled in any approved HMO, will be allowed to enroll in **HealthSelect of Texas or HealthSelect Plus, if the participant is eligible.** [the self-insured health plan and other optional coverages held immediately prior to the date of change in residence.] Coverage in the HMO will be canceled on the last day of the month in which the previously described employee, retiree, or other participant moved from the service area, and the coverages in **HealthSelect of Texas or HealthSelect Plus** [the self-insured health plan] will become effective on the day following the day HMO coverage is canceled. The evidence of insurability **provision** [rule] shall not apply in these cases. The preexisting conditions exclusion shall apply if **enrollment in HealthSelect of Texas** [the return to the self-insured health plan] occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.

[(4) An employee or retiree who moves his or her place of residence into an HMO service area is eligible to apply for coverage on or within the first 30 days after the date of residence in the HMO service area. Coverage will become effective on the first of the month following the date of application.]

(5) An employee, retiree, or other participant, who is enrolled in HealthSelect Plus and permanently moves his or her place of residence out of the HealthSelect Plus service area will be enrolled in HealthSelect of Texas, whether or not an HMO is available. Coverage in HealthSelect Plus will be canceled on the last day of the month in which the previously described employee, retiree, or other participant moved from the service area, and coverage in HealthSelect of Texas will become effective on the day following the day HealthSelect Plus coverage is canceled. The evidence of insurability provision shall not apply. The preexisting conditions exclusion shall apply if enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.

(6) When a covered dependent of an employee/retiree permanently moves out of the employee/retiree's HMO service area, the employee/retiree must make one of the following elections, to become effective on the first day of the month following the date the dependent moved out of the employee/retiree's HMO service area:

(A) drop the ineligible dependent**, unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits)**; or

(B) change coverage to an HMO for which the employee/retiree and covered **dependents** [dependent] are eligible. If there is no HMO for which all are eligible, then the employee/retiree and covered **dependents** [dependent] may enroll in **HealthSelect of Texas or HealthSelect Plus, if all are eligible** [the self-insured health plan]. The evidence of insurability **provision** [rule] shall not apply. The preexisting conditions exclusion shall apply if **enrollment in HealthSelect of Texas** [the return to the self-insured health plan] occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.

(7) When a covered dependent of an employee/retiree permanently moves out of the HealthSelect Plus service area, the employee/retiree must make one of the following elections to become effective on the first day of the month following the date the dependent moved out of the HealthSelect Plus service area:

(A) drop the ineligible dependent, unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits); or

(B) change coverage to HealthSelect of Texas. The evidence of insurability provision shall not apply. The preexisting conditions exclusion shall apply if enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.

[(7) Persons wishing to change from one HMO to another HMO in the same service area, change from the self-insured health plan to an HMO, enroll in a dental plan, or change dental plans will be allowed an annual opportunity to do so. Such opportunity will be scheduled prior to September 1 of each year at times announced by the system. Persons in a declined or canceled status may apply for coverages in an HMO for which they are eligible and a dental plan during the annual enrollment period. Coverage in the HMO will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1.]

(8) Employees and retirees will be allowed an annual opportunity to make changes to their coverages in the Uniform Group Insurance Program.

(A) Persons will be allowed to:

(i) **change from one HMO to another HMO;**

(ii) **change from an HMO to HealthSelect Plus;**

(iii) **change from HealthSelect Plus to an HMO;**

(iv) **change from HealthSelect of Texas to HealthSelect Plus;**

(v) **change from HealthSelect of Texas to an HMO;**

(vi) **change from HealthSelect Plus to HealthSelect of Texas;**

(vii) **select in-area or out-of -area coverage in HealthSelect of Texas based on an out-of-area residential zip code and an in-area work zip code;**

(viii) **enroll in a dental plan;**

(ix) **change dental plans;**

(x) **enroll eligible dependents in an HMO, HealthSelect Plus, or dental coverage;**

(xi) **enroll eligible dependents in HealthSelect of Texas, without evidence of insurability, if the participant is enrolled in HealthSelect of Texas and does not reside in any HMO service area. The preexisting conditions exclusion, as defined in subsection (g) of this title (relating to Enrollment and Participation), will apply; or**

(xii) **enroll themselves and their eligible dependents in an eligible HMO, in HealthSelect Plus (if they are eligible), and in a dental plan from a declined or canceled status.**

(B) Such opportunity will be scheduled prior to September 1 of each year at times announced by the system. Coverage selected during the annual enrollment period will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1. The evidence of insurability provision and the preexisting conditions exclusion shall not apply to persons changing from HealthSelect Plus to HealthSelect of Texas except that, if the participant's or dependent's enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment or retirement, the preexisting conditions exclusion will apply for the remainder of such 12 month period.

[(8) Participants who are enrolled in the self-insured health plan and do not reside in any HMO service area will be provided an annual opportunity to enroll eligible dependents in dependent health coverage without evidence of insurability. Such opportunity will be scheduled during the annual enrollment period. Coverage will be effective September 1.]

(9) Unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits), an employee or retiree who wishes to decrease or cancel coverage may do so at any time. Coverage will continue through the last day of the month following the **signature** date of **the enrollment form** [application].

(10) An eligible dependent spouse or child who has health coverage as an employee under the program becomes eligible for coverage as a dependent on the day following termination of employment. Eligible dependent children who have health coverage in the program as dependents of an employee who terminates employment also become eligible for coverage on the day following termination of employment. In order to be eligible for coverage, dependents must meet the definition of dependent contained in §81.1 of this title (relating to Definitions) and be enrolled for coverage by the employee of whom they are the eligible dependent and who is enrolled for health coverage under the program. The effective date of coverage will be the first day of the month following termination of employment if an **enrollment form** [application] is completed and signed on or within 30 days following the date the dependent(s) become eligible under this rule.

(11) Notwithstanding the effective dates of coverages, as defined in paragraphs (1)-(9) of this subsection, an employee, retiree or other eligible participant in the program may complete an **enrollment form** [application] or **enrollment forms** [applications]

during the annual enrollment period to make coverage changes, as determined by the trustee, to be effective September 1.

(g) Preexisting conditions exclusion. The preexisting conditions exclusion shall apply to employees, retirees, and eligible dependents who **enroll** [are enrolled] in **HealthSelect of Texas** [the self-insured health plan]. The exclusion for benefit payments shall apply for a full 12 months from the effective date of coverage for a preexisting condition, as defined in §81.1 of this title (relating to Definitions). The preexisting conditions exclusion will not apply to:

(1)-(2) (No change).

(3) an individual allowed to **enroll in HealthSelect of Texas** [return to the self-insured health plan] because the individual moves permanently out of an HMO service area except that, if **enrollment in HealthSelect of Texas** [the return to the self-insured health plan] occurs within 12 months of the initial date of coverage under the current term of employment, the exclusion will apply for the remainder of the 12-month period for any condition for which the participant received medical advice or was treated by a physician during the six-month period immediately prior to the initial date of coverage under the current term of employment;

(4) an individual who enrolls in an HMO **or in HealthSelect Plus;**

(5) an individual (including previously covered dependents) transferring employment with no break in service from the University of Texas System or the Texas A&M University System to a department in the program**;** [.]

(6) an individual returning to state employment in accordance with the conditions described in subsection (h)(2) of this section **; or**[.]

(7) an individual enrolling, during the annual enrollment period or upon enrollment as an annuitant, in HealthSelect of Texas from HealthSelect Plus. If enrollment in HealthSelect of Texas occurs within less than 12 months of continuous coverage in the program, the preexisting conditions exclusion shall apply for the balance of the 12 month period.

(h) Reinstatement in the program.

(1) Unless specifically prohibited by these sections **, Chapter 85 of this title (relating to Flexible Benefits),** or contractual provisions, an employee who terminates employment and returns to active duty within the same contract year may reinstate health coverage for himself and his dependents identical to, and optional coverages no greater than, those that were in effect when the employee terminated by submitting an **enrollment form** [application] for the coverages. The **enrollment form** [application] must be submitted on the first day the employee returns to active duty, and, unless the employee completes the **enrollment form** [application] indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty, the coverages will be effective on the day the employee returns to active duty. Dependents acquired during the break in employment may be added on the **enrollment form** [application]. A returning employee who has selected coverages less than those for which the employee is eligible may reinstate any waived coverages by submitting the appropriate **enrollment form** [application] during the 30 days following the date the employee returns to active duty. The change in coverage will become effective on the first day of the month following the date of **signature on the enrollment form** [application]. If the coverage of an employee returning to active duty within the same plan year is affected by Chapter 85 of this title (relating to Flexible Benefits), the employee must reinstate all coverages that were in effect on the termination date, and the effective date of reinstated coverage must be the date the employee returns to active duty.

(2) An employee who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and who is in a military leave without pay status or who must terminate employment as the result of an assignment to active military duty may, upon return to active employment, reinstate all program coverages that were in effect immediately prior to the commencement of active military duty, as long as the return to active employment occurs within 90 days of the release from active military duty. An employee may also reinstate the coverage of the employee's dependent, who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and whose coverage is terminated as the result of an assignment to active military duty. To reinstate canceled coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement. The **enrollment form** [application] to reinstate such coverages must be completed and signed during the 30 days following the day the employee returns to active employment. In the case of the dependents, the **enrollment form** [application] to reinstate such coverages must be completed and signed within 30 days following the release from active duty. **Enrollment forms** [Applications] for coverages to be effective on the day the employee returns to active employment must be completed and signed on or before the first day of the return to active employment. Coverages for which the **enrollment form** [application] is completed and signed after the first day of the return to active state employment and within 30 days after that day will be effective on the first day of the month following the date of **signature on the enrollment form** [application]. **However, if the coverage of an employee returning to active duty within the same plan year is affected by Chapter 85 of this title (relating to Flexible Benefits), the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.**

(3) Employees whose coverages were canceled during a period of leave without pay due to a certified work-related disability may, upon return to active duty status, reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, except as provided in §81.11(c)(4) of this title (relating to Termination of Coverage), and provided **an enrollment form** [application] to reinstate such coverages is **completed and signed** [made] within 30 days of the return to active duty. Evidence of insurability will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement. Coverages applied for on the first day of return to active duty will be effective on that day unless the employee completes and signs the **enrollment form** [application] indicating

coverages are to be effective on the first day of the month following the date the employee returns to active duty. Coverages applied for after the first day of return to active duty and within 30 days after that day will be effective on the first day of the month following the date of **signature on the enrollment form** [application]. **However, if the coverage of an employee returning to active duty within the same plan year is affected by Chapter 85 of this title (relating to Flexible Benefits), the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.**

(4) Employees whose coverages were canceled during a period of leave without pay as a result of the Family and Medical Leave Act of 1993 may, upon return to active duty, reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, provided **an enrollment form** [application] to reinstate such coverages is **completed and signed** [made] within 30 days of the return to active duty. **However, if the coverage of an employee returning to active duty within the same plan year is affected by Chapter 85 of this title (relating to Flexible Benefits), the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.** To reinstate canceled coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement.

(5) Employees whose coverages were canceled on or after January 31, 1995, during a period of leave without pay, except as provided in paragraphs (2)-(4) of this section, shall upon return to active duty be enrolled in the basic plan, provided the employee is eligible for the full state contribution. Reinstatement of canceled coverages must be in compliance with paragraph (f) of this section and Chapter 85 of this title (relating to Flexible Benefits).

(i) Continuing coverage in special circumstances.

(1) (No change.)

(2) Continuation of health, dental, and life coverages for employees in a leave without pay status.

(A) An employee in a leave without pay status may continue the types and amounts of health, life, and dental coverages in effect on the date the employee entered that status for a maximum period of up to 12 months. The maximum period may be extended for up to 12 additional months for a total of 24 continuous months, provided the extension is certified by the department to be for educational purposes. **The employee must pay premiums directly as defined in §81.3(d)(2)(B)(i) of this title (relating to Administration).** Disability income coverage for an employee in a leave without pay status will be suspended beginning on the first day of the month in which the employee enters the leave without pay status and continuing for those months in which the employee remains in that status. Suspended disability income coverage for an employee returning to active duty from a leave without pay status will be reactivated effective on the first day the employee returns to active duty if the entire period of unpaid leave was certified by the department as approved leave without pay.

(B) (No change.)

(3)-(11) (No change.)

§81.11 Termination of Coverage.

(a)- (c) (No change.)

(d) Coverage rescinded.

(1) The executive director may rescind any insurance coverage of a participant in the program, if the executive director determines that the coverage was obtained by a fraudulent act or by making a material misrepresentation or by supplying false information on any enrollment form or application for coverage or related documentation or in any communication.

(2) If the participant's coverage is rescinded, it may be rescinded to the date of the inception of the coverage or to the date of the fraudulent act or material misrepresentation.

(3) The executive director also may deny any claim filed to obtain benefits from the fraudulently induced coverage.

(4) The executive director's decision to rescind insurance coverage or to deny a claim may be appealed to the board in accordance with §81.9 of this title (relating to Grievance Procedure).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 1, 1996.

TRD-9609342
William S. Nail
Executive Director
Employees Retirement System
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 867-3336

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Fees for Copies of Records

37 TAC §1.130

The Texas Department of Public Safety proposes new §1.130, concerning the fingerprinting of individuals and authorizing a $10 fee for such service. The purpose of this new section will be to authorize the department to collect a $10 fee when preparing fingerprints for members of the public. Law enforcement agencies were authorized to collect a fee for this service under House Bill 3017, passed by the 74th Legislature, 1995.

Tom Haas, Chief of Finance, has determined that for each year of the first five year period the rule is in effect there will be some revenue collected and deposited to the state's general

revenue fund as a result of enforcing or administering the rule. The department does not have any available estimates as to the amount of revenue which may be generated by this new rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the availability of obtaining good quality fingerprints from law enforcement personnel. There will be no appreciable effect on small or large businesses. The anticipated economic cost to individuals who are required to comply with the rule as proposed will be the $10 fee to be fingerprinted.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773, (512) 424-2890.

The new section is proposed pursuant to Texas Government Code, §411.006(4), which authorizes the director of the Department of Public Safety to adopt rules, subject to commission approval, considered necessary for the control of the department.

Human Resources Code, §80.001(b) is affected by this proposal.

§1.130 Fee for Fingerprints.

On request and payment of a fee of $10, the department may record a person's fingerprints. The department may retain records of fingerprints taken under this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on ***, 1996.

TRD-9609497
James R. Wilson
Director
Texas Department of Public Safety
Earliest possible date of adoption: August 12, 1996
For further information, please call: (512) 424-2890

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) proposes the repeal of §3.3906 and §§3.3908-3.3911; amendments to §3.301, concerning responsibilities of client and DHS; §3.703, concerning resource limits; §3.704, concerning types of resources; §3.1101, concerning who are required to participate; §3.2204, concerning Type Program 07 Medicaid; §3.2205, concerning Type Program 37 Medicaid; §3.3904, concerning household determination; §3.3905, concerning time limitations; and §3.3907, concerning employment services. DHS also proposes new §3.3909, concerning failure to comply with the JOBS programs and §3.6004, concerning applicability of policies resulting from House Bill 1863, in its Income Assistance Services rule chapter. The purpose of the repeals, amendments, and new sections is to implement welfare reform policies as required by House Bill 1863.

Terry Trimble, interim commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $4,144,496 in fiscal year (FY) 1997; $6,508,846 in FY 1998; $6,952,109 in FY 1999; $7,107,417 in FY 2000; and $7,266,195 in FY 2001. An estimated reduction in cost for the first five-year period the sections will be in effect will be $576,860 in fiscal year (FY) 1997; $576,860 in FY 1998; $576,860 in FY 1999; $576,860 in FY 2000; and $576,860 in FY 2001. There will be no effect on local government or small businesses as a result of enforcing or administering the sections.

Mr. Trimble also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that DHS will be in compliance with state legislation related to welfare reform. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Rita King at (512) 438- 4148 in DHS's Client Self-Support Services Department. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services - 327, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter MM. Aid to Family with Dependent Children-Unemployed Parent Program

40 TAC §§3.3906, 3.3908-3.3911

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The repeals implement the Human Resources Code §§22.001-22.030 and §31.0325.

§§3.3906. Aid to Families with Dependent Children - Unemployed Parent (AFDC-UP) Medicaid Assistance Only (MAO).

§§3.3908. Volunteering for JOBS.

§§3.3909. Failure to Comply with Job Opportunities and Basic Skills (JOBS) Program.

§§3.3910. Eligibility for Type Program 07 Medicaid Services.

§§3.3911. Eligibility for Type Program 37 Medicaid Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 3, 1996.

TRD-9609551
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1996
For further information, please call: (512) 438–3765

Subchapter C. The Application Process

40 TAC §3.301

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code §§22.001-22.030 and §31.0325.

§§3.301. Responsibilities of Clients and the Texas Department of Human Services (DHS).

(a)-(c) (No change.)

(d) Additional state and client responsibilities are explained by eligibility staff to households as a condition of Aid to Families with Dependent Children (AFDC) eligibility in Texas as specified in paragraphs (1)-(6) of this subsection.

(1) (No change.)

(2) Requirements.

(A) (No change.)

(B) Client requirements. DHS requires each adult AFDC recipient, including minor parents applying as a caretaker/second parent, as a condition of eligibility to sign a personal responsibility agreement as specified in Human Resources Code, §31.0031(a). Unless exempted by Human Resources Code, §31.0031(f), regarding unavailability of funding for support services, DHS requires household members to comply with requirements listed in Human Resources Code, §31.0031(d) after the agreement has been signed by an adult recipient, or the household is subject to a penalty as described in paragraph (5) of this subsection. Additionally, the requirements and penalties related to immunizations specified in Human Resources Code, §31.0031(d)(2) apply to cases in which the adult caretaker relative is not a certified recipient. **For the parenting skills training specified in Human Resources Code §31.0031(d)(8), DHS requires participation by certified caretakers and second parents of a certified child under age five and teen parents. Others may voluntarily participate.**

(3) Establishing compliance. Compliance with Human Resources Code, §31.0031(d) is established in the following manner:

(A) Recipients must provide proof of compliance with provisions in Human Resources Code, §31.0031(d)(2),(6), and (7) at each periodic review. DHS accepts the following as proof of compliance:

(i)-(ii) (No change.)

(iii) Human Resources Code, §31.0031(d)(8). DHS accepts written or verbal proof of training completion from the person or organization that provided training.

(B) Recipients are considered to be in compliance related to the sections of the Human Resource Code, described in clauses (i)-(iv) of this subparagraph unless noncompliance is determined.

(i) Human Resources Code, §31.0031(d)(4) [and (8)] unless noncompliance is determined pursuant to §3.1104 of this title (relating to Failure to Comply with the Job Opportunities and Basic Skills (JOBS) Program);

(ii)-(iv) (No change.)

(4) (No change.)

(5) Penalties for noncompliance with requirements. Failure to comply results in the penalties specified in subparagraphs (A)-(D) of this paragraph.

(A)-(C) (No change.)

(D) Penalty periods. DHS starts penalty periods beginning with the earliest month benefits can be adjusted. The penalty for noncompliance with Human Resources Code, §31.0031(d)(4) is imposed for the time period specified in §3.1104 and §3.1105 of this title (relating to Failure to Comply with the Job Opportunities and Basic Skills (JOBS) Program and Establishing Eligibility). The penalty for noncompliance with Human Resources Code, §31.0031(d)(3) is imposed for three consecutive months, or fewer than three months, if the recipient returns to that job or another comparable job, according to the regulations applicable to the Food Stamp Program, as specified in 7 Code of Federal Regulation §273.7(n)(5)(ii), relating to voluntary quit. The penalty for noncompliance with Human Resources Code, §31.0031(d)(5) is imposed for six consecutive months. The penalties for noncompliance with requirements specified in Human Resources Code, §31.0031(d)(1), (2), (6), (7), and (8) remain in effect until the month after the noncompliance ends. DHS considers noncompliance with these requirements to have ended as specified in:

(i)-(iii) (No change.)

(iv) Human Resources Code, §31.0031(8). For recipients participating in the JOBS program, the case manager monitors and ensures the client participates and completes the parenting skills program. The case manager determines **compliance** [noncompliance]. **The eligibility worker performs these actions for either JOBS** or non-JOBS clients.

(E) (No change.)

(6) Good cause. Good cause for noncompliance as specified in Human Resources Code, §31.0033 is established for the requirements listed in Human Resources Code, §31.0031(d) as explained in the following subparagraphs.

(A)-(F) (No change.)

(G) Human Resources Code, §31.0031(d)(8). Good cause is established **if:** [as specified in 45 CFR §250.35 and Human Resources Code, §31.0031(f), regarding parenting skills training.]

(i) no classes are available in the area or verification from known providers is received indicating that all classes were full when offered;

(ii) the provider verifies the client is currently attending classes;

(iii) the client provides a physician's statement or medical evidence that illness or injury prevented training completion when classes were available; or

(iv) the client provides verification that other circumstances beyond his control prevented training completion, such as a household disaster.

(H) (No change.)

(I) Good cause related to parenting skills noncompliance. A client may request a determination that his noncompliance was due to good cause after a penalty is imposed. The client receives a determination regarding good cause for parenting skills noncompliance by the eligibility worker or case manager.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 3, 1996.

TRD-9609552
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1996
For further information, please call: (512) 438–3765

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter N. Residential Property Insurance Market Assistance Program

28 TAC §§5.10001-5.10015

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the proposed new §§5.10001-5.10015, which appeared in the April 30, 1996, issue of the *Texas Register* (21 TexReg 3673).

Issued in Austin, Texas, on June 18, 1996.

TRD-9609344
Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 1, 1996
For further information, please call: (512) 463-6327

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